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## GETTING THE ELEPHANT OUT OF THE COURTROOM: APPLYING DEVELOPMENTAL PERSPECTIVES TO THE DISPOSITION (NOT JUST THE ASSESSMENT) OF JUVENILE OFFENDERS

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Laurence Steinberg and Elizabeth Cauffman's essay moves in a positive direction by suggesting ways to incorporate considerations of an adolescent's developmental status into assessments regarding his or her delinquent and criminal behavior. If the assumptions underlying their thesis are correct, however, then their conclusions could and should be extended much further. Their analysis, taken together with current research on successful rehabilitation programs for serious juvenile offenders, suggests that the current movement toward earlier waiver of juveniles into adult court is based on a simplistic and outmoded understanding of issues of juvenile maturity and amenability to treatment. We outline an alternative perspective on the role of the courts in handling juveniles that is more in keeping with current theory and research.

Steinberg and Cauffman's main argument receives near universal support among developmental psychologists: Adolescents are less mature than adults in a variety of ways. Steinberg and Cauffman also appropriately note that the assessment of adolescent maturity must be based on consideration of numerous aspects of psychosocial functioning. At first glance, these arguments appear obvious and commonsensical. Unfortunately, current practice largely disregards them. Implicit in the Steinberg/Cauffman analysis is the idea that maturity cannot simply be assumed to positively correlate with the length of an adolescent's rap sheet. Yet, Steinberg and Cauffman's empirically-based analysis stands in sharp contrast to the oft-repeated slogan in the field: "If you're old enough to do the crime; you're old enough to do the time." This slogan, although simplistic, nevertheless reflects a great deal of the rhetoric behind the movement over the past several decades to make it easier for states to transfer juveniles to adult courts for repeated and serious criminal behavior.<sup>1</sup> A fundamental assumption underlying both the slogan and many juvenile waiver statutes is that to some extent the seriousness or repetitiveness of a crime is a valid marker of a youth's maturity.<sup>2</sup> From a developmental psychologist's perspective, there are both logical and pragmatic problems with equating seriousness of offenses with the degree of maturity of the adolescent who commits them.

First, the implicit assumption that maturity can be equated with seriousness of crimes stands in opposition to much of what we know about the development of deviant adolescents. The past twenty years of developmental research largely rebuts the idea that the most serious juvenile offenders are those who have moved the farthest beyond immature status. On the contrary, we now have a tremendous body of research showing that teenagers who commit crimes are less mature than other adolescents of the same age on numerous dimensions, including impulse control, planning ability, academic achievement, emotional maturity,

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interpersonal sophistication, perspective taking, and ability to form mature relationships.<sup>3</sup> Each of these characteristics is negatively associated with adolescents' delinquent and criminal behavior. In fact, cases we have documented show that the degree of immaturity is even greater for adolescents who are committing more serious delinquent acts.<sup>4</sup> None of the research that led to these findings was conducted (or used) to make a point about juvenile justice policies or to argue on behalf of the immaturity of juvenile delinquents. Rather, the research grew out of efforts to understand basic processes leading to deviant adolescent behavior. This research is relatively unbiased with respect to juvenile justice policies. Yet it leads to the conclusion that the adolescents who are most likely to be transferred out of juvenile court and into adult court under current waiver statutes are those who are the most child-like in their development. In sum, the equation of increased seriousness of crimes with increased maturity appears to be exactly wrong.

More important, perhaps, is the fact that this erroneous equation carries negative pragmatic consequences. Developmental theories of adolescent deviance proposed by Terrie Moffitt suggest that many problematic juvenile behaviors, including smoking, drinking, and criminal behavior, may be viewed as (misguided) ways for adolescents to try to attain the semblance of adult status by performing adult-like behaviors.<sup>5</sup> Said more simply, young people engage in these behaviors to appear more "grown up." From that perspective, a court system that treats seriousness of crimes as a marker of maturity may have the unintended consequence of making serious criminal behavior appear more mature (and hence more appealing) to juveniles on the street. Although harsher penalties for juvenile crime may serve a deterrent function, this deterrent function may be diluted within juvenile subcultures if these penalties are imposed in such a way as to imply that serious delinquents are more mature than their less delinquent counterparts.

If maturity is an inadequate ground to support the waiver of most juvenile offenders into adult court, are there other rationales that might nevertheless support this practice? Probably the most compelling argument has been that serious juvenile offenders are not amenable to treatment within the juvenile system. To some extent, this line of reasoning is an indirect appeal to a maturity argument, for it suggests that serious offenders have lost a certain degree of plasticity or changeability in behavior. That is, while these offenders may not be as mature as adults in some respects, they may resemble adults in the degree to which their criminal behavior has become impermeable to outside intervention. If juvenile courts are essentially powerless to rehabilitate the most serious offenders, then we might choose to transfer juveniles to adult courts simply on utilitarian grounds. The idea that "nothing works" in rehabilitating serious juvenile offenders is one of the most powerful ideas to take hold of the juvenile justice system in a long time. This idea captures and represents the frustration of those working with the most difficult offenders over long periods of time. As a field we came to it honestly as new approach after new approach failed through the mid-1980's.<sup>6</sup> The fundamental problem with this argument today, however, is that high quality research has now conclusively shown that the idea that "nothing works" with serious juvenile offenders is clearly erroneous.

Used properly, the statement "nothing works" was always provisional, i.e., nothing works yet. It now needs to be given the burial it deserves. Approaches are now being implemented that can address the problems of serious offenders at various stages in their criminal careers. Among the most promising is Multisystemic Family Therapy, which is an approach to treating serious delinquents developed by Scott Henggeler and colleagues at the University of South Carolina.<sup>7</sup> This program essentially recognizes that serious adolescent criminal behavior is multiply determined. The "source" of such behavior can be seen as residing within the individual teenager and within his or her family, peer group, school, and neighborhood—all simultaneously. This program moves beyond a theoretical notion in adopting a treatment approach that uses carefully targeted interventions to alter each of the multiple influences on

a juvenile's criminal behavior. The program is cost effective and has now been used both in university-based pilot programs and in multiple "real-world" community replications. Long-term follow-up data show that even beginning with hard core, violent, and repeat offenders, re-arrest rates over a four year period are typically as low as twenty-six percent in the treatment group versus seventy-one percent for the control group.<sup>8</sup> The bottom line is that, not simply for first-time juvenile offenders, or even for repeat minor offenders, but also for the most serious, violent juvenile offenders, we now have approaches that work relatively well at rehabilitation.

Given the evidence that serious juvenile offenders are both immature and amenable to treatments of the type that juvenile courts can potentially offer, how then do we explain the continued dismantling of juvenile courts?<sup>9</sup> Here, the Steinberg/Cauffman analysis helps by acknowledging the understandable difficulties in accepting the basic fact that kids are committing serious crimes. On the one hand, the crimes themselves legitimately give rise to feelings of anger, fear, and vengefulness. These reactions are readily understandable as some of the crimes committed by juveniles are outrageous violations of a moral order. These reactions, translated into political will, may be one of the largest forces propelling the move toward dismantling the traditional juvenile court system. At the same time, no amount of fear or moral outrage can change the basic fact that the perpetrators of many very serious crimes are often truly just kids. We use the colloquial term "kids" intentionally here because, as we have stated, all developmental evidence suggests that the term is likely to be appropriate for describing the highly immature teenagers who typically commit serious offenses. This usage is in no way intended to minimize the seriousness of the crimes committed. The seriousness of an act is not diminished by acknowledging that it was done by an immature being. Recognizing that we are meting out harsh punishments to people who are both immature and who have great potential for rehabilitation should create a profound sense of discomfort—a sense well captured by Steinberg and Cauffman's image of an elephant in the courtroom.

The Steinberg/Cauffman analysis begins to deal with this problem by suggesting better ways of making decisions about various aspects of juveniles' maturity. Their approach is thoughtful and well-grounded, but ultimately does not go far enough. If a complex and thoughtful decision-making framework about adolescent maturity must ultimately have its results funneled into a single choice between juvenile and adult court (as these courts are currently constituted), the benefits of the graduated and multi-faceted decision-making framework are largely lost. For many, perhaps most, serious juvenile offenders, juvenile courts will still appear overly lenient, and adult courts will still appear overly draconian.

The answer to this dilemma lies in designing our treatment (not just our assessment) of juvenile offenders to acknowledge and respond appropriately to the gradual nature of the transition to adulthood. Steinberg and Cauffman note at the outset of their essay that adolescence is perhaps best defined as being a period of transition—or rather of many transitions—from childhood to adulthood. These changes—seen in everything from friendships to family relationships to interactions with the workplace and the law—are a hallmark of adolescence. Increasingly, researchers have come to recognize that when these transitions are gradual, continuous, and smooth, they proceed with fewer difficulties.<sup>10</sup> For example, students who go to residential colleges typically experience a fairly gradual and successful transition from living under their parents' protection to living on their own. In contrast, when transitions are abrupt, sudden, and all-or-nothing, they are more likely to be problematic. For example, adolescents who move rapidly into significant levels of sexual activity with little or no preparation are undergoing a clearly discontinuous transition. The negative outcomes of such abrupt transitions—children having babies, young people with HIV infections, etc.—give rise to problems in which the individuals involved appear grossly mismatched to the consequences of their behaviors.

From this perspective, our justice system imposes a massively discontinuous transition upon adolescents, moving them from a juvenile court with original aims of rehabilitation, limited punishment, and protection of the juvenile to an adult court focused on punishment, retribution, and protection of society.<sup>11</sup> For example, sixteen-year-olds are viewed as too immature to vote, to decide whether not to drink a beer or smoke a cigarette, and even to enter most contracts that have significant financial ramifications. Yet, current waiver statutes consider them mature enough to incur the death penalty for their most immature behaviors. As with other abrupt transitions, we see the juveniles involved appearing mismatched to the consequences of their behaviors. Similarly, to tell fourteen year-olds that no crimes they commit now will matter once they are adults—because their records of offenses will be wiped clean by the juvenile courts—is to treat them as children in the worst sense. It would be difficult to imagine a parent telling a fourteen year-old that inattention to school work or risky sexual behavior was only a problem in the present, because by age twenty-one all effects of these behaviors will be erased. Yet, the state, as *parens patriae*, does precisely that in most juvenile courts. The current system thus denies juveniles the opportunity to learn about being adult in a gradual, continuous way.<sup>12</sup> Rather, it builds them up to be shocked as they land in adult court after committing one offense too many in a system that seems to presume that they have made enormous gains in maturity since their last offense.

These problems stem from the attempt to treat juveniles as either primarily immature or primarily mature. In contrast to the sharp dichotomy between juvenile and adult systems, the adolescents in these systems are making a more complex, gradual, and multi-faceted transition, developing rapidly in some ways (e.g., in the capacity to physically harm others) and gradually in others (e.g., in understanding the full repercussions of their actions). This suggests not only that the Steinberg/Cauffman analysis is correct in calling for a third category, labeled “youth” and lying between juveniles and adults in assessing juvenile offenders, but that we must also go further in creating a third category of societal responses that acknowledges the gradually changing status of adolescents. To use Steinberg and Cauffman’s term and extend it a bit, we may need a true “Youth Court” that is structured in a way that recognizes the continuous nature of the transition from childhood to adulthood.

In speaking of a “Youth Court” we are not envisioning an entirely new legal structure, but rather a way of rethinking what we use juvenile (and perhaps adult<sup>13</sup>) courts to do. The following suggestions are offered not as concrete action plans, but rather as a challenge to bring the way we treat juveniles more into line with what we know about the nature of transitions in adolescent development. The fundamental principle of permitting a gradual transition from child to adult status in a Youth Court would be to provide it with the full range of options and dispositions of current juvenile and adult courts, depending upon the offender and the crime. A Youth Court would deliberately straddle lines between punishment and rehabilitation, but would do so in ways that make sense given a juvenile’s criminal behavior and maturational level.

Juvenile offenders would be introduced to punishment early on as a legitimate part of the court system. But this introduction would be made gradually, with more and more features of the adult system being brought on line as youths became more mature. This would provide greater opportunities for youths to learn from direct experience about the punitive nature of the adult criminal justice system toward which they are moving. Similarly, such a system would increasingly (but gradually) acknowledge the permanent nature of the juvenile’s actions and their consequences. Youths would be introduced gradually to dispositions that would last past age twenty-one.

Records would also become more permanent, rather than being wiped clean at twenty-one. Just as dropping out of high school has permanent consequences, even if done by adolescents,

so should some crimes. Adolescents are not fully mature, but they are in the process of becoming adults, and recognizing the permanence of their own actions and their own accountability is one way this occurs.

Rehabilitation could and should remain a legitimate goal of a Youth Court even when the offender is well past the age at which most juveniles are now routinely waived into adult courts. If we can give judges the latitude to recognize the ways in which juveniles are becoming more like adults—in their capacity to commit horrible crimes that warrant significant and lasting punishments—we might also come to recognize the positive ways in which these juveniles are still “just kids.” The evidence that appropriate rehabilitative efforts can be effective for a clear majority of juvenile offenders is now persuasive. Yet, we are currently hamstrung in capitalizing on this evidence. Unfortunately, just as current juvenile courts are often not constituted to mete out appropriately serious consequences for some offenses, most adult courts are not well-prepared to identify and use intensive rehabilitative methods appropriate to juvenile offenders.

In sum, we need to give courts the flexibility to treat juveniles in ways that acknowledge both their adult-like and their child-like characteristics. Only in this way can we show these juveniles that serious crimes have serious consequences while also recognizing and capitalizing on their capacity for future change and maturation. This may or may not require formation of a new entity—a true Youth Court—but it does require a restructuring of courts to take better advantage of the transitional nature of development for youth in our society. From this perspective, the Steinberg/Cauffman analysis is useful in moving us toward a recognition of the intermediate and transitional status of most juvenile offenders. Truly gaining the greatest benefit from their analysis, however, will require structuring our court system not simply to accurately assess the immature status of some adolescents, but also to flexibly and adaptively respond to this status after assessments have been made.

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