Lethbridge Undergraduate Research Journal
ISSN 1718-8482



Lethbridge Undergraduate Research Journal
ISSN 1718-8482

# The Criminal Prosecution of Juveniles: A Philosophical Reappraisal of Adolescent Agency

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**Citation:**

Kristin Rhodes: The Criminal Prosecution of Juveniles: A Philosophical Reappraisal of Adolescent Agency. *Lethbridge Undergraduate Research Journal*. 2008. Volume 3 Number 2.

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## Abstract

This paper examines the implications of contemporary advancements in neuroscience for our understanding of agency, particularly in assessing the criminal responsibility of juvenile offenders. I argue that the increasingly sophisticated knowledge of adolescent brain development challenges conventional notions of juvenile accountability. Central to our usual notion of accountability is agency -- our sense that an individual must be capable of navigating his or her own life and of making decisions for which he or she in significant part is responsible. In order to defend a modified version of agency for juvenile offenders, I elaborate on Daniel Dennett's model of the brain, a model that redefines metaphysical conceptions of free will and defends a naturalist conception that is more compatible with advancements in neuroscience. This revised conception of free will challenges conventional notions of legal guilt and accountability; it illuminates new ways of thinking about the complex and difficult questions of juvenile agency. I argue that such rethinking of juvenile agency will deepen our capacity to respond wisely and justly to juvenile crime and affirm a cherished but reconceived agency in young offenders.

## A New Perspective on Juvenile Delinquency

Juvenile crime poses exceptionally difficult questions for the criminal justice system and for communities that fear for their safely, worry about brutal crimes that mimic adult crimes, and search for ways to redirect young offenders from early

antisocial patterns of behavior. Rarely are issues of juvenile crime and punishment examined for the philosophical issues they raise, issues that lie at the heart of social debates over trying juveniles as adults, and over punishments meted out to the most serious juvenile offenders. This paper seeks to examine the conflicted and deeply divided debate over juvenile agency in light of the work of contemporary philosophers, neuroscientists and psychologists. Juvenile agency, I will argue, cannot be understood simply as adult agency in miniature, nor should we completely abandon traditional notions of free will as some philosophers fear would happen with a materialist view of the adult brain. Instead I will develop a more modest notion of juvenile agency that relies on an increasingly sophisticated awareness of the neuroscience of the adolescent brain development. This paper will affirm and promote greater juvenile accountability by highlighting the developing nature of the juvenile mind and place greater emphasis on self-development, heightened self-awareness and personal responsibility. I will begin with an analysis of key issues that confront the juvenile court system, arguing that much of its inefficiency rests on an inaccurate understanding of the juvenile mind. Then I will discuss the notion of accountability within the context of the legal system. I will show how advancements in neuroscience have challenged our traditional understanding of accountability and given us a greater sense of the dynamic, malleable and unfinished nature of the adolescent brain. Next I will explore the work of two pioneers in neuroscience - Benjamin Libet and Daniel Wegner – to examine the question of free will and its implications for juvenile agency. I will draw upon Daniel Dennett's theory to show how a meaningful conception of free will can exist without the weaknesses of the models proposed by Libet and Wegner. Based on Dennett's model, I will defend the view that the most relevant component of accountability is the agent's ability to be self-reflectively rational. By understanding the mind as rational, even if the factors at work in influencing action exceed our full awareness, we can create a juvenile justice system whose goals are to best understand the developing minds of juvenile offenders so that juveniles are humanely punished, recidivism is lessened and rehabilitation more likely. I will argue ultimately that the juvenile mind is less rational and more vulnerable to environmental influences then the adult mind, making young people more susceptible to crime but also to rehabilitation.

## The Problem with “Getting Tough” on Juvenile Offenders

While separate systems exist in all states to try and punish juveniles in ways distinct from adults, punishment for crimes such as murder and rape raise controversy over whether all juveniles deserve less punitive treatment. If juvenile offenders are capable of atrocious crimes, then it is understandable that some would seek high standards of accountability and harsher punishment. Loosely called the “get tough” philosophy, this view has pervaded the discussion of juvenile justices over the past decades. As such, legislation has widely been enacted as a reaction against rising crimes rates to ensure juveniles are punished more harshly.

Now with the advantage of time and hindsight, we can analyze the effectiveness of these reforms. Statistically, these “get tough” laws were neither successful, nor morally defensible. Instead, they have not treated this age group fairly and humanely nor has a safer society been achieved.

When governors in the mid 1990's promised to get “tough on crime” by sending more juveniles through the adult system, the assumption was that such legislation would give juvenile offenders longer, harsher sentences and create a safer environment. Yet none of these premises has proven true. Instead, as I indicate below, juveniles prosecuted through the adult system serve shorter sentences and leave with a greater propensity towards criminal behavior. Not only do the adult jails teach youths how to become criminals, but also they often deny them any sort of counseling to help them in the transition to life beyond incarceration.

In Pennsylvania, legislation passed in 1995 promised that youths aged 15 and older convicted of violent crimes or gun felonies would be sentenced to at least 5 years in prison. This was a year longer than they could be detained in a juvenile sentence at reform school, the maximum penalty allotted in the juvenile system. This law, as part of Act 33, was supposed to keep violent and re-offending criminals off the streets, deter future youths from offending, and soothe the public's sense of fear and vengeance. However, “despite politicians' claims that the law would send violent juveniles to prison for at least five years, most of the youths sentenced in adult court got less than a year. Such short sentences are served in county jails-not state prisons-so the majority of youths did not get the education, counseling or rehabilitative services that are available in a new prison Governor Tom Ridge built for these offenders.” [1] Instead of the close monitoring that the young offenders would get in the juvenile system, they were neglected in the adult system, which more readily seeks to put offenders on probation in order to alleviate costs. The result of these reforms was sentences that did not uphold Ridge's promises of tougher sanctions.

## Ineffective Results: The Practical Argument

These sentences not only were not “tough,” they were also not effective. “When compared with the youths transferred to juvenile court and sent to reform schools, those who remained in criminal court and served more time in jail were more likely to commit new crimes and more likely to commit more serious offenses.” [2] Florida, which suffers the highest juvenile crime rate in the nation, is also the leader in sending the highest number of youths to prison. And as in the case of Pennsylvania, such measures have proven ineffective. “A 1996 study showed that youth transferred to adult court in Florida were a third more likely to re-offend than those sent to the juvenile justice system for the same crime and with similar prior records. Of those youth who committed new crimes, those sent to adult court re-offended at twice the rate of those sent to juvenile court.” [3] Thus all types of youth sentenced to prison through the adult system re-offended more often than those serving for similar crimes through the juvenile system. This shows that “get tough” laws are not supported by fact, but rather by emotion; the statistics suggest that tougher legislation does not seem to be an effective way to quell juvenile crime rates.

Furthermore, while youths in the juvenile system go through reform programs, their peers serving time in adult prisons learn how to become hardened criminals. Jeffery Fagan, a professor of law and public health at Columbia University, notes that the adult prisons expose the vulnerability of youth. He writes: “During the years when the transition from adolescence to adulthood occurs, when social skills and cues are learned, these youth will know little else other than the institutional world. The social rules and norms learned are those that prevail in the institution, including the reciprocal cycle of victimization and retaliation.” [4] Additionally, while the juvenile system hides the youths' criminal records from most organizations, the adult system makes the records public. This also perpetuates the criminal cycle, ending hope for

rehabilitation. “Another reason for the higher recidivism by teens sent to prison is that their adult criminal records keep them from getting jobs and from admission to some schools, both of which tend to push them toward committed new crimes to make money.” [5] Once youths are stuck with a record, they are forever stigmatized and allowed few opportunities for regaining productive lives.

## Harmful to All: The Morality Argument

Sending juveniles to adult prisons is not only detrimental to society, it is also immoral. Juveniles sent through the adult system sometimes serve their sentences in adult prisons because of financial or space considerations. They then become susceptible to rape and attacks by their adult roommates. “Nationally, children in adult jails and prisons are 5 times more likely to be raped, twice as likely to be beaten by staff, and 50% more likely to be attacked with a weapon than youths sent to juvenile justice system. A Justice Department study showed that the suicide rate of children in adult jails is 7.7 times higher than that of youth in juvenile detention centers.” [6] This is certainly not the type of punishment intended by the new laws, but is another unfortunate consequence of the system. Yet this consequence could be avoided by keeping young offenders within the juvenile system. Not doing so, especially in light of the statistics proving the ineffectiveness of the “tough on crime” laws, would be unnecessarily cruel to this vulnerable population.

Since “getting tough” has proven problematic morally and ineffective as punishment, alternative responses to juvenile crime are badly needed. The path toward a better response, I argue, begins with a richer conception of agency in which juvenile offenders are understood developmentally, in which enhancing agency and self-reflective rationality in the vulnerable, unfinished juvenile mind is foremost.

## Accountability in the Court Room

When an adult commits a crime, we make common assumptions about the agent's state of mind. In the court room we try to explain how exactly this brain state was defective. “Most crimes have among their material or defining elements certain mental states or character defects, such as intention or purpose, knowledge, recklessness, or negligence.” [7] We can see the various ways in which mental states underplay variations of the same crime.

For example: Saul killed June. He confessed his crime and advanced lie detectors have confirmed his admission. The next relevant consideration is why he killed June (since a description of his intent will determine how the criminal justice system will deal with him). If he spent months seeking revenge for June's infidelity and follows through by shooting her, then this premeditated act will be treated as murder. This would mandate a harsher sentence than if he had killed her without premeditation—if for example, Saul had arrived home and, in a fit of jealous rage, hurled a paper weight at her head, killing her. Or perhaps the act wasn't voluntary at all. Perhaps Saul didn't know June. Instead, he fell asleep at the wheel while driving home from work and caused a fatal crash in which June died. This act would be treated as involuntary manslaughter and yield a lesser sentence. Lastly, Saul might have killed June as an act of insanity, leading to his action being treated as the result of mental illness rather than criminality.

These variations illustrate how the justice system conventionally considers intent when evaluating criminality. It deals with people as if they are free-willed agents, capable of making their own decisions unless overwhelming evidence exists to the contrary. It is also significant that it punishes based on these distinctions, affirming that our minds and actions matter and have consequences for which we are accountable. This promise of retribution in our conventional response to crime makes us know that our choices matter. We see that consequences will arise from our actions in a non-arbitrary way. But is this model fully adequate in understanding juvenile criminality? Before examining this question I turn to research that complicates the conventional model.

## Neuroscience and Accountability

Central to our sense of justice is the belief that human beings are free agents, capable of choice. However, some research by neuroscientists challenges this assumption and undermines the ways that we appraise accountability. The more we learn about the neuroscience of action and deliberation, the more the conventional idea of the responsible agent is challenged, and according to some, discredited. Brent Garland, M.S., J.D. (Senior Program Associate with the Scientific Freedom, Responsibility and Law Program of the American Association for the Advancement of Science) explains the dilemma: “if we are mere mechanisms, controlled by our mechanistic brains, then how can we have free will? And if we do not have free will, then how can we be held responsible for our own action, whether that consists of signing a contract or committing a murder?” [8] Not understanding the brain allowed us to have faith in the existence of a purely deliberate, consciously premeditated and willed action. Neuroscience questions that faith, holding mental processes to the same physical rules of the rest of the universe. In this light scientific evidence suggests that the degrees of mental states that we assume to exist (as shown in the Saul/June example) may be less distinct than we assume, or even the action we consider most deliberate and premeditated may have compromised agency. Instead, they would all belong to the same category of predetermination. If this is the case, then how we understand accountability should change and greater attention should be given to emergent awareness and nuanced and compromised agency.

“According to one line of thought, our preference for an excusing system rests upon an outdated and prescientific view of human behavior. All the talk about free choice, responsibility, and the importance of mental states fails, according to this view, to reflect what we now know—namely, that causal determinism is true (there is a causal explanation for everything we do) and we are simply complex mechanisms working out our programmed natures.” [9] Even if we do not adopt such uncompromising determinism, I believe we are wise to take from its challenge a greater hesitation in assuming in juvenile offenders the presence of agency according to the conventional adult model.

The next section will explore exactly how advancements in neuroscience have produced unsettling results. Despite this history of research, I will argue that it is still possible to hold a modified but meaningful view of agency and a richer sense of developing juvenile agency.

## Science and the Illusionary Will: Benjamin Libet and “Free Won't”

Benjamin Libet--a pioneer on the subject of agency--used neuroscientifc research to understand free will. One of his experiments has become the reference point on the discussions of free will. [10] Not only has it shed light on how the brain works, but, more importantly, his experiment reveals the common conceptions we have when approaching agency, conceptions that themselves need questioning.

In Libet's experiment, participants were asked to look at a clock and then to move their wrist at random. When this decision was made, the participants were asked to note the time on the clock. He found that the time between the brain was activated (its "readiness potential") and the subject's report of the time was about 300 milliseconds. From this observation, Libet and subsequent authors concluded the following. "If the readiness potential of the brain is initiated before we are aware of making the decision to move our hand, it would appear that our brains know our decisions before we ever become conscious of them." [11] In other words, since the body was ready to move before the subject was even consciously aware the decision, Libet and others concluded that our brain actions must precede our conscious will. And if these unconscious processes preceded our conscious will, they went on to conclude, then it must be that we don't have free will-the mechanical processes of our brain decides our actions, not ourselves.

However, Libet didn't give up all hope of free will. Instead, he noted that the patients experienced a moment of readiness before they choose to act. This feeling was enough to allow them to ultimately decide whether or not to act on the unconscious impulse. This has since been described as the free won't theory: "unconscious brain events start the process of a voluntary act, but then just before it is actually carried out, consciousness may say either 'Yes' or 'No': the action goes ahead or not." [12] Thus, according to Libet, we may not have free will but we do have free won't. A residual degree of agency is salvaged.

## Daniel Wegner and the Illusionary Will

Daniel Wegner, a prominent psychiatrist, builds on this conception of a revised free will. He contends that free will is an illusion. By illusion, he does not mean "something that does not exist, but something that is not what it seems." [13] Just like Libet, he has used science to show how our conception of free will may not be what we think it is. However, his theory goes beyond the "free won't" conclusion. Wegner argues that the conscious will is not event, but rather a more complicated series of processes. He writes that "one might assume that the experience of consciously willing an action and the causation of the action by the person's conscious mind are the same thing. As it turns out, however, they are entirely distinct, and the tendency to confuse them is the source of the illusion of conscious will." [14] In other words, what we perceive as one thing—our feeling of consciousness arising into action—is actually two distinct mental processes (the action and the feeling of the willing to action). He labels the two of these processes as the empirical will ("the causality of the person's conscious thoughts as established by a scientific analysis of their covariation with the person's behavior") and the phenomenal will ("the person's reported experience of will"). [15] He uses the anomalies of alien hand syndrome and hypnosis to show how our bodies can act without our consciously willing them to act. Thus, in these instances, the feeling of consciousness and the action are two separate mental functions.

Wegner goes on to explain how the phenomenal will—where we feel as though we are willing our action—is actually just an illusion. It is based on an incorrect causal sequence: we think and then act. He writes, "the theory of apparent mental causation, then, is this: people experience conscious will when they interpret their own thought as the cause of their action." [16] However, Wegner argues, this belief results from mixing up correlating factors with causal factors. "Although we may be fairly well convinced that A causes B, for instance, there is always the possibility that the regularity in their association is the result of some third variable, C, which causes both A and B [.] The uncertainty in causal inference means that no matter how much we are convinced that our thoughts cause our actions, it is still true that both thought and action could be caused by something else that remains unobserved, leaving us to draw an incorrect causal conclusion." [17] In other words, our thoughts are not the causes of our actions, but rather both our actions and our thoughts are the result of other underlying unconscious mental processes. Instead of being the cause of our actions, our thoughts are previews of our action, a feeling that has played an important part in social interaction as it gives us a perception of ownership. "The thoughts we find coming to our minds in frequent coordination with what we do may be produced by a special system whose job it is to provide us with ongoing verbalizable previews of action." [18] This phenomenal experience was important in the evolutionary need to communicate with other humans; we needed the ability to feel and then articulate our reasons for action.

## Problems of Accountability

Yet if Wegner's conception is true--that our phenomenal and empirical wills are two separate processes, and that our phenomenal will is simply a preview of our empirical will—then we could conclude that we actually have no responsibility for our actions. In other words, if part of our brain decides to act before conscious awareness of the action, then can we be held responsible for this act despite our lack of conscious awareness on the matter? Such a conclusion could have significant implications for how we punish criminal acts. Most significantly, crimes that are not premeditated—such as crimes of passions—could be most easily dismissed. When someone is punched in a fight or shot in the heat of anger (though we could question why the person had a gun in the first place), causing injury or death, the perpetrator could argue that his brain "just did it" without him being able to stop it. He could describe some unstoppable force, commanded by his body, and, according to Wegner and Libet, it is not an implausible argument.

While these are the most obvious examples of the theory's implications in the courtroom, Wegner's theory could be applied to other cases when taken to its logical extreme. If we can argue that in some cases we are not responsible for our body's actions, then where would we draw the line to determine the cases in which we are responsible for our actions? If our subjective experience of conscious action always follows the decision to action, then how can we say that we are ever responsible (in the sense that we are aware of the decision) for our actions? It is as if we are programmed to live in our past—that some other forces (such as environment and biology) determine our actions, and we just get to sit back and watch them occur, and, at most in fortunate cases, censor actions already underway. In this way, it becomes difficult to argue that we are more responsible for our brain events then any other third-party observer.

Even the "free won't" response proposed by Libet and his co-researchers is problematic. They propose, based on one interpretation of the evidence, that we have milliseconds of conscious awareness of these predetermined actions before we

act. Even if this is true (some authors have argued against the validity of this interpretation) it would be difficult in every case to blame people for decisions made in such a small time frame. While the current conception of mind (our actions arise from conscious thoughts and decisions) entails a mental and subjective process that develops over time, Libet's theory presents a significantly shorter period of deliberation. This makes the period of subjective will--the most important component in determining intent—problematically small. Consequently, this discrepancy would require a new justification for punishment in cases of supposed intent.

## Recognizing the Cartesian Trap

Fortunately, there are logical errors in the mind theories presented by Libet and Wegner, leaving some hope for a meaningful version of free will and accountability. While they may have shed light into how the brain works, their most important contribution has been to show the rigidity with which we cling to a metaphysical conception of self. Underlying both theories is the dualistic assumption that something other than causal brain mechanisms is doing the feeling and deciding. Libet describes our ability to decide consciously not to act on unconscious impulses. Wegner describes the phenomenal will as being a preview to our actions, a feeling of ownership rather than legitimate ownership. Both beliefs beg the question: who is making the conscious decision not to act (Libet) and who is "feeling" this false sense of will (Wegner)? Both still assume that there is some agent, some entity behind the all the brain processes that, like in the Cartesian theater, who is willing or watching the unfolding of events.

I will argue, in line with Dennett, that there no ghost in the machine exists, that free will must be understood in non-metaphysical terms. Therefore (with this premise stated), Libet and Wegner have not reconciled free will with determinism-they have failed to describe how the metaphysical conception of self and its attributes of agency exist within the cause-and-effect paradigm. Philosopher Thomas Nagel describes this dilemma in terms of competing perspectives. "We necessarily act from an internal perspective, from which we appear to ourselves as sources of activity, determining which of a number of open alternatives is realized. But this appearance is not validated by an objective or external point of view, according to which 'the agent and everything about him is swallowed up by the circumstances of action; nothing of him is left to intervene in those circumstances. . .We and our lives are seen as products and manifestations of the world as a whole." [19] In the case of Libet and Wegner, they remain trapped in this dualistic perspective—they still believe there is an agent doing the feeling, perceiving, feeling, etc. who is immune to this outside world of cause and effect. From the exterior, we can describe the brain in terms of action (making the arm move) and from the interior, perception (Wegner's preview of the action). Thus the dilemma is not resolved; we can either rest in ignorant comfort or face the problem and pick one side—either we have free will or we don't.

Daniel Dennett attempts to solve this dilemma of describing the illusionary will without falling into the Cartesian trap. He develops an intentional stance whereby the agent is not susceptible to unconscious impulses but rather is the unconscious impulses (in addition to a host of other brain processes). In his newest book on the matter, *Freedom Evolves*, he details the evolutionary process of the development of consciousness, dispelling metaphysical notions of the self and likening the brain to a computer program. He shows how consciousness can still be worthwhile and "free" without sticking to folk notions of an illusive self. [20]

I will now elaborate on this notion of conflicting perspectives and show how Dennett's observations can contribute to a more nuanced understanding of free will, neuroscience, and justice. Overall, I will show how Dennett's view, far from eradicating free will, actually enhances our notion of responsibility and accountability. This view is especially important when considering the adolescent stage of brain growth and supports the view that affirming and helping to develop self-responsibility is a crucial component in juvenile rehabilitation.

## A Matter of Perspective: Neuroscience and the Future of Justice

Daniel Dennett's explanation of free will is particularly important to this discourse because it acknowledges the paradox of free will and determinism. It ensures that developments in science are unlikely to eradicate our conception of free will on the basis that the idea of free will is a weak belief. In other words, by noting the problems with the concept now, new developments will be less able to surprise us. To show how Dennett's theory can provide an adequate explanation of free will to satisfy the agency requirements of a justice system, I will briefly detail Dennett's theory, discuss its implications and show how our usual conception of free will fulfills all the requirements of accountability that the justice system requires. I will argue that the free will-determinism relationship is a paradox because the two cannot be comprehended simultaneously. When we acknowledge that this paradox is based on perspective, it need not interfere with the meaning of our subjective experience.

## Daniel Dennett's Evolutionary Theory

In his book *Freedom Evolves*, Dennett likens the mind to a computer program composed of on and off switches that, when viewed from above, take the form of creature-like entities. Working together, the cells are designed to react to each other, such that it appears as though one group attacks or avoids the other. The design works so that these groups appear to have free will, when in fact they are programmed to "behave" in a certain way, based on the input values of the other cells. [21]

Dennett's computer program metaphor is a useful tool in understanding how our minds get confused with this paradox of perspectives. On the one hand, the program's concept of determinism is straightforward and easy to understand-the cells turn on and off based on the programming of the creator. On the other, it is easy to see how those simple cells can be "animitized" (Dennett's word) when working together in patterns; we immediately begin to interpret their actions as intentional and free willed. The concept of avoidance further complicates the issue; when the lights, acting together, are programmed to "avoid" other groups of lights (even here, I struggle to describe without animorphizing the lights) it becomes harder for us to see their actions as pre-programmed, the results seeming unpredictable. These paradoxes, Dennett goes on to explain, result from the inability of our minds to understand conflicting perspectives. On the one hand, we are capable of logic and thus understand determinism. On the other, we have evolved to interpret the world in a certain way, namely to view certain patterns as intentional. (Several experiments have been conducted to prove this (Heider and Simmel 1944,

Deberlein and Adolphs 2004). Thomas Nagel elaborates on this theme: “While we can easily evoke disturbing effects by taking up an external view of our own actions and the actions of others, it is impossible to give a coherent account of the internal view of action which is under threat. When we try to explain what we believe which seems to be undermined by a conception of actions as events in the world-determined or not-we end up with something that is either incomprehensible or clearly inadequate.” [22]

And while there are a plethora of other issues surrounding the concept of free will, this particular problem of perspective is most relevant to our discussion on accountability in the legal system. Other issues, like alternative possibilities, the definition of action, notions of causality and improvement, to name a few, are important to the concept but less relevant to this discussion. If we accept the problem of perspective, we can understand how scientific developments will affect our notions of accountability; we can accept that science will enrich our logical perspective of determinism without it detracting from our account of free will.

We can be confident on this point because of our necessary ignorance on the matter. The bottom line is that we have evolved, or have been “programmed,” to view the world from a first-person perspective. While we can step back and analyze and predict the actions of ourselves and of others based on our reasoning faculties, giving us a glimpse into that “god's eye” perspective, we will ultimately never achieve total omnipotence. We are destined to perceive many of life's events as random; we are destined to remain unaware of much of our own brain's calculations and the reasons for our thoughts and actions. This makes determinism irrelevant in our daily lives and decision-making process. It makes Wegner's and Libet's observations that our subjective experience seems to follow our will to action irrelevant. We can rest comfortably in the notion that our minds are our brains and that there is no ghost in the machine, no uncaused mover. Instead, we are all biological mechanisms expressing meaningful patterns of the universe under the grace of ignorance.

## Veil of Ignorance

Because all humans share this common naiveté, we can hold each other accountable based on this shared experience. Worded in the language of determinism—we can say that we are programmed to accept that holding each other accountable is the best way to ensure that we act as though we are accountable. We can also describe this decision in terms of agency. Writes Dennett: “Having good reasons for wanting free will is not, of course, having good reasons for believing one has free will. It seems to be, however, that having good reasons for wanting free will is having good reasons for trying to get oneself to believe one has it. For it is very likely, as we have seen, that believing that one has free will is itself one of the necessary conditions for having free will: an agent who enjoyed the other necessary conditions for free will-rationality, and the capacity for higher order self-control and self-reflection—but who had been hoodwinked into believing he lacked free will would be almost as incapacitated for free, responsible choice by that belief as by the lack of any other necessary conditions.” [23]

Thus, we have the ability to believe that we have free will. Even if we acknowledge that this belief is just that—a matter of faith and not necessarily reality—we can still live our lives with a confident sense of action and agency. Similarly, we can extend this faith to others We can believe that everyone is capable of this sort of faith and regulative sense of agency. In this way, we affirm the projection of intentionality that we have evolved to perceive.

In a criminal justice system, we don't pretend to have a complete understanding of agency. Instead, we acknowledge that we can describe motivation and action in terms of some events, but we realize that we are not capable of complete accuracy. For example, if Saul decided to kill his wife because of infidelity, we can convict him on the basis that he deliberated on and followed through with the action. Though we could describe some factors that led him to the decision—his history of neglectful parents, his dedication to his wife despite her infidelity, his unstable self-confidence—we could never give a complete account of the environmental and biological factors that caused his brain and body to conceive of and follow through with the murder. Because of this inability, we could never fully explain the reasons for this being's actions since others in Saul's position do not murder. Thus, a complete account would never be possible. Instead, we consider the circumstances in terms of mitigating and aggravating factors—events reviewed during the sentencing court for the way they have affected someone's actions, not for how they determined them. Implicit in this distinction is the notion that an agent has some sort of agency when interacting with the world. While from the god's-eye view this may be insupportable, it is a meaningful description from the first-person perspective.

A more complicated example—Saul's crime of passion—further challenges the issue of agency. If an unsuspecting Saul came home to find his wife with another man, and kills the man out of surprise and anger, the law has been inclined to hold him less accountable then in the pre-meditated example. We could say that his brain acted before he had sufficient awareness and time to reflect and change his course of action. Yet what the pre-meditated crime and the crime of passion examples share are their causal process—both are the result of sequential brain actions. While we might consider the latter offence mitigated by circumstances, we would still hold the person responsible for his crime because he acted under the same pretense of free will as the rest of us. Thus, the concept of accountability does not hinge wholly on free will, but rather on rationality. Next I will explain how the justice system deals with rational versus irrational minds rather than a free will construct.

## The Rationality Requirement

A person's guilt depends on his ability to be rational. Since we are all under the illusion of free will, it is most reasonable to mandate that we all use our “programming” to the best of our abilities. To use Dennett's metaphor, if we program the condition that we must all make “good” decisions (another complicated point, but for the sake of this paper we will say good means to follow the law) based on all available information, then those who make “bad” decisions have chosen to do so and must be prepared to face the consequences. As ruled by the M'Naughten standard, those who are proven incapable of rationality are declared insane and therefore are not held accountable for their actions. Those people that are fit to stand trial and to be held accountable are those who are capable of rational deliberation.

This criterion of rationality is crucial to a judicial system's philosophy of deterrence and retribution. Only those minds that are rational can properly access the situations around them, internalizing and analyzing factors that lead to action. Deterrent factors then become part of the deliberation process, a promise of a certain consequence for certain actions.

Similarly, only those people who are capable of this type of deliberation can be held accountable—justifying retribution. Irrational minds would not fit this criteria. That is why deterrence and retribution are only adequate for rational minds and inapplicable to irrational minds.

Because questions of guilt are based on rationality rather than abstract considerations of free will, the justice system has some resilience against radical developments in neuroscience. “Thus, the argument goes, new science can help us figure out who was or was not rational at the scene of the crime, much as it has in the past, but new science will not justify any fundamental change in the law's approach to responsibility unless it shows that people in general fail to meet the law's very minimal requirements for rationality.” [24] For any new developments to affect a person's trial or the process itself, they must be relevant to questions of rationality and not free will. Affirming that brain states have produced actions will be nothing new—we have already accepted that minds may well be brains and everything is essentially determined. However, because we all share this regulative idea, and gain advantage for doing so, we can also accept this regulative idea as the standard and not the exception that needs to be exploited.

We can use this perspective on the brain to better understand the mind of juveniles, holding them accountable for their actions in a way that is mindful of their capabilities, particularly their ability to be rational and not simply impulsive. This will produce the most effective results and be the most moral way to deter youth from criminal activity. The next section will explore the ways in which juvenile minds are different from adults. I will then explain why this difference matters and how we should consider it in light of what we know about adult agency.

## A Glimpse into the Juvenile Mind

What is most important in understanding the juvenile mind is to give consideration to the biological differences of the young brain from fully developed brains. It is significant to note too the greater dependence that young persons might have on their environment—how they are more susceptible to surrounding influences than their adult counterparts. All people are can be considered a product of the forces of their environment and their anatomy. However, this does not mean that agency is an empty concept. Rather, belief in agency is significant—we assume people have the capability to make choices and grow according to their first person perspective. Similarly, young people have a belief that they have control over their lives in a meaningful way. While the constraints on their control may be different from adults, they still feel and act as though they are willing their actions, the most important aspect in maintaining agency. Thus, the best way to deal with juvenile offenders involves a commitment to the thorough understanding of their minds: their rational capabilities, their more limited world view, their perspective of themselves and feelings of control.

## Why Adolescents are Different from Adults

A child is born totally dependent on the environment, relying on outside forces for survival. As the child grows he/she become more independent, developing the proper mental faculties to be a self-sufficient adult. The time between infancy and adulthood is the transition phase of adolescence. Thus it forms the shade of gray between total dependency and independence, between actions molded by exterior forces and those increasingly self-willed by greater autonomy. Accordingly, we do not hold infants accountable for their actions while we consider adults as culpable agents, and juveniles as beings in between. U.S. Supreme Court Justice Stevens noted this gray region when he wrote that “less culpability should attach to a crime committed by a juvenile than to a comparable crime committed by an adult, since inexperience, less education, and less intelligence make the teenager less able to evaluate the consequences of his or her conduct while at the same time he or she is much more apt to be motivated by mere emotions or peer pressure than is an adult.” [25] Therefore, since children do not have fully developed brains, I believe the juvenile system should hold them less accountable for their actions than in the adult system.

Additionally, because of their relative inexperience with the world, adolescents are much more susceptible to outside influences than adults. It has been noted that “adolescents choose to engage in more high-risk or illegal behavior when compared to adults, and those poor choices tend to decrease as one reaches adulthood. Evidence exists that supports the contention that adolescents between the ages of 15 and 17 (and, by implication, younger juveniles) differ from adults on decision making capacities that is particularly relevant to problem solving. Furthermore, those choices appear to be related to social and cognitive developmental variables, which in turn influence problem-solving processes.” [26] The differences between adolescents and adults render differences in their behavioral patterns, differences that should be known and understood in order to properly deal with them.

## Biological Factors Affecting Juvenile Criminality

To begin, definite differences exist between the developing brain of a younger person from that of an adult. Research from magnetic resonance imaging studies show “that marked differences do exist between the brain of a 13-year-old and that of a 25-year-old.” [27] These developments result in differences of behavior among adolescents. Specifically, younger persons have proven to be more impulsive and less rational than fully-developed adults based on the developing biology of a few key brain areas.

Primarily, it is the amygdala and the late-development of the prefrontal cortex that accounts for adolescent behavioral trends. “Adolescents rely more heavily on the amygdala—an evolutionarily older area of the brain associated with 'primitive impulses of aggression, anger and fear-than adults do. This proposition seems logical, since the prefrontal cortex, which interacts with and in effect 'reins in' the amygdala to temper impulsiveness and gut reaction with reasoning, does not fully develop until the early 20s.” [28] Thus, in the developing stages whereby the prefrontal cortex takes over judgment control from the amygdala, adolescents are prone to more impulsive, aggressive behavior, characteristic of the amygdala's primordial function.

This biological difference is consistent with the behavioral problems associated with juvenile offenders. “An analysis of findings from many studies conducted by the U.S. Department of Justice found consistent evidence suggesting a correlation between violent behavior and hyperactivity, concentration problems, restlessness and risk taking [. . .] Other research indicates that there is strong evidence for the co-occurrence of mental health disorders, such as depression, among

children or youth which antisocial or delinquent behavioral problems." [29] These statistics suggests that some adolescents have a particularly rough transition to adulthood. What results is an excessive use of the amygdala and consequently, risk-taking behaviors. This makes for more impulsive, aggressive children, which explains the prevalence of delinquency among certain ages.

## Environmental Factors

Exacerbating these differences in brain structure are the environmental factors that further expose the impressionable nature of youth. As such, they heavily influence the actions of juveniles due to their relative inexperience in the world. For example, abuse and neglect exist in an especially high number of youth offender cases. "More than half [of juvenile offenders]—52 percent—had been abused or neglected. [. . .] In addition, at least 40 percent were the children of criminals." [30] This factor is especially alarming, both as a statistic and as a moral issue-is it fair to hold children fully accountable for crimes of which they themselves have been the victims? Crimes towards which they have groomed by their abusive parents and other irresponsible members of their community?

Although these factors undoubtedly affect adult crime as well—abused, poor, neglected children turn into adults—they are especially contentious when dealing with child offenders. "That key idea is that youths have less well-informed intentions and characters than adults. That implies that, as a matter of justice, it is wrong to hold youths accountable for their crimes in the same way as adults. It also means, as a matter of practical concern, that there might be a greater opportunity to intervene in the future development of youths than would be true for adults." [31] Thus, the justice system has recognized that the environment heavily influences youths because of their fragile sense of identity.

These developmental factors, rooted in the vulnerability of biology and environment, make a case for different approaches between the adult and juvenile courts. Not only should the two operate differently for the sake of moral concerns, but also for the hope of a better society. Adolescent susceptibility to outside influences makes this age group a prime target for rehabilitative efforts.

This case for juvenile reform is further strengthened by Dennett's materialist model of the brain. If we are to understand juvenile actions and thoughts in causal/scientific terms then we are to understand the young person by understanding his/her brain make-up and processing abilities. This perspective reveals a developing and malleable mind, one that can be shaped by positive interaction with the world. Contrary to the fears of some philosophers, this materialist perspective does not diminish the belief in juvenile accountability, but rather strengthens the notion. Because we know the juvenile mind in terms of how it works, we can better reach the young person through daily interaction, helping him/her acquire a more meaningful and self-perpetuated sense of responsibility. Such efforts will be detailed in the next section through the critique of programs that try to harness this promise.

## Reforming the Juvenile Offender and the Community

So far I have presented the factors and statistics relevant to youth crime and related them to an ideal way to consider the juvenile mind in reform efforts. Based on this information, a different model of juvenile justice emerges. Though past juvenile systems have tried to confront offending youths through inadequate retributive measures, the facts and newly proposed versions of free suggest that a rehabilitative model is more appropriate.

Such a reform model would address moral concerns, as well as providing a more effective method of punishment juvenile offenders. Morally, it is in the State's interest to be as careful as possible in addition to caring for individuals in the most humane way. Because rehabilitative methods are the most effective, they make society the safest; and because they consider the true nature of the child, they are moral in both respects. Thus the ideal model revives the concerns of the original juvenile court while also maintaining standards of due process; they are paternalistic in their concern for juvenile offenders while also being conscientious in protecting their rights. Such a model can be found in community based programs that are based on a philosophy of reparation.

Rehabilitative philosophies appreciate the evolving character of the adolescent mind. They consider that adolescent brain development is not complete, that juveniles are more likely to be impulsive and less likely to use their rational capabilities. Furthermore, in its goal to change and not only to punish, rehabilitative philosophies recognize that much of what influences the young person's thought process might be negative and destructive, which contribute to poor decision making. By taking into account the nature of the juvenile mind, it makes sense that any system wishing to reduce juvenile crime would want to intervene in this area of decision making. Such an interference during an impressionable age leads to the possibility of lifetime positive effects. This does not mean that adolescents should not be punished. On the contrary, juvenile offenders must be punished to recognize the evolving agency we consider them to have. However, the goal of this punishment would be to constructively change the way the juveniles think, to help them make more positive choices in the future. Ideally, consequences would show juveniles that their actions matter, that they have some measure of control of what happens in their lives despite past action. In this way, the rehabilitative philosophy affirms Dennett's observation that first person perspectives matter in our daily lives.

Because juveniles are easily influenced, the community plays a crucial role in influencing their futures. This influence can be exerted in a positive way by affirming a measure of agency as we punish and seek to rehabilitate. "Protective factors that can help build resiliency and reduce overall risk for violent behavior at the environmental level include national, state and local policies that support child and youth-oriented programs. [. . .] A strong community infrastructure has been identified as a protective factor against youth violence in resiliency literature." [32] This type of community atmosphere must provide a sense of belonging to even its youngest members. A sense of positive responsibility shared by all members give children a greater sense of purpose that helps shape a more positive future. "The commitment of resources to programs that support meaningful opportunities for adult/youth interaction will help more adults understand youth perspectives and behaviors, and can contribute to a culture of caring instead of one that ignores youth, or worse, labels them as deviant or antagonistic." [33] When understandings develop between members of the community, it helps children develop the positive individual traits that aid in resiliency. When applicable, programs geared at rehabilitating children should also involve the people who surround them, for these are their greatest influences. Such a forum should be positive and encouraging to help the group establish a better environment in which their children develop.

Over the past decade, a version of the rehabilitation-based philosophy has emerged called reparation. The reparative approach seeks to mend both the victim and the aggressor, the juvenile and the community. It encourages youths to take responsibility for their delinquent acts by apologizing to and directly recompensing the victim. It also encourages community service as a form of punishment to make the juvenile aware of the outside world that his/her actions affect. This method of rehabilitation considers the vulnerable nature of the juvenile mind and strengthens the adolescent's own sense of agency by encouraging direct responsibility. In Pennsylvania, the reparative philosophy has found its way into public practice (part of 1995's Act 33) in the form of BARJ—"Balanced and Restorative Justice." Specifically, the three main goals of BARJ are "the protection of the community, the imposition of accountability for offenses committed and the development of competencies to enable children to become responsible and productive members of the community." [34] This not only gives the system a sense of direction, it also stresses a new importance on the consideration of the victims and the community. It intends to hold juveniles accountable, make them more responsible adults, and repair the rising worries about youth crime in the community. It tackles these concerns while trying to maintain the rehabilitative premise of the original Juvenile Courts.

## Neuroscience: Good News for Juvenile Rehabilitation

A growing appreciation for how the mind works has unearthed significant philosophical issues in juvenile justice and the debate over whether juveniles should be treated as adults. Yet rather than being a destructive force to fragile intuitions, such advancements in neuroscience have required thoughtful reconsideration of these issues, leading to a stronger and more accurate understanding of the adolescent mind. Similarly, these new insights play a practical role in their application to problems of juvenile delinquency. An appreciation for the many factors that influence the juvenile mind supports positive philosophies like rehabilitation and reparation, affirming an increasing sense of responsibility in juvenile offenders for their actions so that they might seize the sense of agency that we have evolved to cherish.

### About the Author

Kristin Rhodes graduated from Gettysburg College (Gettysburg, PA) in May 2007 with a BA in philosophy. Her interest in juvenile justice began with an internship at the Magistrate Court in Bath, England in spring 2006, where she witnessed the difficulties that the courts have in dealing with juvenile offenders-determining the point at which juvenile offenders are no longer considered "innocent" children and instead, "responsible" adults. She developed this topic through the support of the New Presidents' Grant from the Andrew W. Mellon Foundation and later through an internship with Adams County Juvenile Probation in Gettysburg, Pennsylvania. She has produced this paper under the much appreciated support and guidance of her professor of philosophy at Gettysburg College, Lisa Portmess.

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Lethbridge Undergraduate Research Journal
ISSN 1718-8482