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CRIMINAL CHILDREN

During a six-month period in 1993, *The Tuscaloosa News* printed the following stories from the national wire-services:

"Kids sentenced for trying to hurt teacher"
"Six fourth-graders held on drug charges"
"Boys raped woman, then went to play, police say"

None of these stories headlined the edition in which it appeared; none even made the front page, for that matter. Evidently, events of the sort they report are too commonplace for that, even though the kids who tried to poison their teacher's iced tea were only in the sixth grade, the ones arrested for possession and intent to deliver cocaine were as young as nine years old, and the boys who gang-raped a woman and then stayed nearby to play basketball ranged from thirteen to seventeen. It is still distressing to read about children doing such things, but it is no longer astounding; it is no longer even particularly difficult to believe.

That is largely because it happens so often. According to the FBI Crime Index, in 1992 there were 112,409 arrests of persons under 18 for violent crimes – for murder, forcible rape, robbery, and aggravated assault, that is.[1] More than 300 every day, to put it differently. Children under fifteen accounted for 34,233 of these: on an average day, 94 people that young were arrested for violent crime.[2] The number who committed such crimes but eluded arrest is incalculable, of course.

[1] *Uniform Crime Reports for the United States*, 1992, p. 277. Unfortunately, this is scarcely a temporary aberration: "Between 1960 and 1981, arrests of juveniles for violent crime increased nearly 250%, more than double the figure for adults during the same period. Although the juvenile court age group constitutes less than 14% of the population, it accounts for nearly one-fourth of those arrested for major violent crime such as homicide, rape, robbery, and felonious assault" (Martin Gardner, 'Punitive Juvenile Justice: Some Observations on a Recent Trend', *International Journal of Law and Psychiatry*, vol. 10, 1987, p. 140).

[2] *Uniform Crime Reports*, p. 277.

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Given all this, it is hard to sustain a certain picture of children that many of us have. According to that picture, a child is an innocent whose misbehavior, apart from that of the truly exceptional "bad seed," is limited to minor mischief and the occasional great blunder. Children do sometimes do wrong, on this view, but in a very different way than adults do. The child's wrongdoing never flows from an evil heart, the idea is – it is never a deed done coldly and responsibly, but something that simply happens, a kind of blameless error emerging from the storm of forces to which the child is subject. The child who does wrong must be corrected before he grows into a criminal, of course, but the point is that he isn't a criminal yet – he is only a child, and one who needs our help.

This picture seems hopelessly naive and old-fashioned, when one is confronted with the stories and the statistics. That is significant, since it is not merely a fond image in the minds of nostalgic adults, but the conception upon which our juvenile court system was founded and that still gives that system much of its form. This image of children is the reason we don't find adolescents to be criminal but only delinquent, hold adjudications for them, rather than trials, expect juvenile judges to function more as social workers than as dispensers of justice, and so on.[3]

If the old picture is to be discarded, though, what is the new one to be? Especially when it comes to children who act in ways that would be criminal if they were adults: if such children are not blameless innocents, what are they, exactly? One answer focuses on adolescents, defined as those between 14 and 18 years old. It contends that someone of this age who acts in a way that would be criminal if he were an adult should be considered capable of having acted culpably, but, if he does turn out to have done so, will have acted less culpably than an adult who committed the same crime would have. Adolescents can be criminals, on this view, but only criminals of a junior kind. The reason for their junior status is not that crimes are less serious or less harmful when committed by an

[3] For a history of the juvenile system, see *The Cycle of Juvenile Justice*, by Thomas J. Bernard (Oxford: Oxford University Press, 1992). Serious efforts to move the system toward a penal model have been underway since at least *In re Gault* 387 U.S. 1 (1967), with uneven results.

adolescent, but that adolescents are less blameworthy for committing them.[4]

The lesser-culpability thesis has at least three versions, which I shall begin by distinguishing. One of those versions is considerably more plausible than the others, I will argue, but I will also argue that not even this version withstands examination. As far as I can see, there is no sound basis for systematically considering culpable adolescents to be any less culpable than adults who commit the same crimes. A closing section discusses briefly the implications of declining to do so.

I

Charles Keene had been married to Billy Thompson's sister, and had treated her in ways that made Billy very angry. One night, Billy and three older friends hunted Charles down. Later, "(t)he evidence disclosed that the victim had been shot twice, and that his throat, chest, and abdomen had been cut. He also had multiple bruises and

[4] "To be just, punishment must be proportionate to the seriousness of the offense committed. 'Seriousness' is determined by assessing the characteristic harmfulness of the conduct and the degree of culpability of the offender. When related to juvenile crime, these principles of justice require that juvenile offenders be punished less severely than their adult counterparts ... considerations of ... characteristic harmfulness seemingly do not themselves demand deviation ... Assessments of juvenile culpability do, however, strongly support a system of scaled-down punishments for offenders dealt with through the juvenile system. While the punitive model requires holding juveniles accountable for their offense, the extent of their accountability should not be synonymous with that of a similarly situated adults" (Gardner, p. 142).

Gardner's version takes only those who would not be transferred for trial as adults to be less culpable. This is a difficult class to specify, since a juvenile cannot be transferred unless the District Attorney seeks to have this done – a decision with political implications – and is then decided by reference to several variables. (In Alabama, for example, the judge is required to take *six* factors into account.)

Versions of this position without this modification are put forward by Justice Powell, writing for the majority in *Eddings v. Oklahoma*, 102 S. Ct. 869 (1982); by Justice Stevens, writing for the plurality in *Thompson v. Oklahoma*, 108 S. Ct. 2687 (1988); by Andrew Walkover in 'The Infancy Defense in the New Juvenile Court', *UCLA Law Review* 31 (1984); and by Barry C. Feld in both 'The Decision to Seek Criminal Charges: Just Deserts and the Waiver Decision', *Criminal Justice Ethics*, Summer/Fall 1984 and 'The Juvenile Court Meets the Principle of Offense: Punishment, Treatment, And The Difference It Makes', *Boston University Law Review* 68 (1988).

a broken leg. His body had been chained to a concrete block and thrown into a river where it remained for almost four weeks."[5]

Each of the four participants was tried separately, and each was sentenced to death. Billy Thompson appealed his sentence, on the ground that he was only fifteen years old when the murder was committed. The Supreme Court ruled in Billy's favor, finding that his youth made executing him unconstitutional – that to do so would violate the Eighth Amendment's prohibition against cruel and unusual punishment.

In part, the Court's reasoning was that the death penalty would necessarily exceed the deserts of anyone so young. Unlike his older companions, a fifteen-year-old could not deserve so harsh a penalty; as a fifteen-year-old, he must have acted less culpably. Here is Justice Stevens to that effect, for the plurality:

> Thus, the Court has already endorsed the proposition that less culpability should attach 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 extended explanation. 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 emotion or peer pressure than is an adult. The reasons why juveniles are not trusted with the privileges and responsibilities of an adult also explain why their irresponsible conduct is not as morally reprehensible as that of an adult.[6]

On one plausible reading, this sets forth a categorial assertion about adolescents.[7] Specifically, it asserts that no matter who the adolescent happens to be, he or she must suffer from defects that diminish responsibility: he or she must be inexperienced, uneducated, less intelligent than an adult, and more vulnerable to surges of emotion and to peer pressure. That is just the way we all are when we are that age, and that is why no adolescent is as culpable for "irresponsible behavior" as an adult would be who acted in the same way.[8] Although Justice Stevens believes that "(t)he basis for

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[5] *Thompson v. Oklahoma*, 108 S.Ct. at 2690.

[6] Id. at 2698–2699.

[7] Justice Scalia so reads it in his dissent. See especially 2711–2719.

[8] *Thompson v. Oklahoma*, 108 S.Ct. at 2687, dissenting opinion. As Justice Scalia reads them, the plurality has found a societal consensus that "no one so much as a day under 16 can *ever* be mature and morally responsible enough to deserve" the death penalty (2718, his emphasis). Justice Scalia contends the consensus is only that such miscreants are rare.

this conclusion is too obvious to require extended explanation," let us consider how such an explanation would run.

Notice first that we could not establish the conclusion that adolescents are always less culpable than adults by showing that every adolescent act is performed under some mitigating circumstance or other. That would establish only that adolescents are never fully culpable, and never deserve as harsh a penalty as a perfect villain would. This differs from their always deserving less than adults who commit the same crime, since clearly not every adult felon is a perfect villain either. It would remain possible for some adolescents to be more culpable than some adults, even if we could show they were always less than fully culpable.

The premise required instead to establish Justice Stevens's conclusion is that there is always greater mitigation for adolescent misbehavior than there is for the corresponding adult misbehavior, regardless who the two individuals are and what crime they commit. We would need to show that adolescents are always more ignorant of important matters, always under greater pressure, and so on. The trouble is that this is far from obvious. It seems especially implausible when the adolescent is about to graduate to adulthood and the adult has only recently done so. The difference in age might be a matter of days: why must the younger felon have acted with greater mitigation than the older? We could just insist that his adolescence guarantees this, but that would hardly be persuasive.

The more plausible picture appears to be the one drawn by Justice Lewis Powell in an earlier case: "Minors who become embroiled with the law range from the very young up to those on the brink of majority. Some of the older minors become fully 'street-wise,' hardened criminals, deserving no greater consideration than that properly accorded all persons suspected of crime."[9]

In short, this first version of the lesser-culpability thesis is not very convincing. It asserts that every adolescent must be less responsible for his or her misdeeds than any adult. It is difficult to see why that would be true, and easy to imagine apparent counterexamples.

Consider, then, a second version, derived from Justice O'Connor's reading of the *Thompson* opinion. She concurs with the plural-

[9] *Fare v. Michael C.*, 442 U.S. at 734, n. 4; 99 S.Ct. at 2576, n. 4; 61 L.Ed. 2d 197 (1979) (dissenting opinion).

ity, but she takes its position differently. As she reads him, Justice Stevens was not asserting that every adolescent is necessarily less culpable than any adult, but only "that adolescents are *generally* less blameworthy than adults who commit the same crime."[10] Because that is the way things generally are, her reasoning goes, it is the best rule for us to follow. We should treat every adolescent as less blameworthy not because he or she must be, but because the typical adolescent is. Admittedly, this will give the exceptional adolescent a break he or she does not deserve, but that is just an unavoidable cost of employing the rule that fits most cases.

The natural question to ask in response is why we should employ a rule at all, as opposed to determining each individual's culpability separately. There are many contexts in which we do employ rules, of course, and in some of those we are concerned to give individuals what they deserve. (Think, for example, of choosing which students to admit to law school by reference to test scores and grades: those are rules of thumb we use even though, of course, we want to admit the most deserving applicants.)

In general, a defense of using rules rather than something more individualized would rest on the following points.

(i) Employing rules could be the only practical method, if there were a great many cases to be handled and it were necessary to reach a decision promptly.
(ii) It could be that the generalizations on which the rules rested had very few exceptions, so that we would make very few mistakes if we employed them.
(iii) It could be that the mistakes we would make were unimportant.
(iv) It could be doubtful that anything more individualized would be an improvement. (For example, the generalizations could be the best basis we could have for predicting who would do well in college or in law school, with individualized procedures simply permitting hunches and biases to enter the process.)

Assuming that this is the general way in which to defend using a rule to make decisions, how well could we defend using the rule that every adolescent is to be punished less severely than his adult counterpart? Certainly we could start by observing that there are a

[10] *Thompson v. Oklahoma*, 108 S.Ct. at 2708 (concurring opinion), my italics.

great many cases to be dealt with, and that promptness is important. After that, however, the defense would begin to break down.

First, although there are many cases to consider, it isn't even clear that using the rule would mean working through those cases a great deal more quickly than considering desert individually, nor is it clear that this is the only practical method by which to proceed. If we were to employ the rule that adolescents always deserve less than adults, we would still have to conduct a trial for each adolescent in order to determine his or her guilt or innocence and, if the verdict was "guilty," decide which of the lesser adolescent penalties the defendant deserved. The rule would save us only from considering penalties so harsh that only an adult could deserve them, if there are any – execution, perhaps. That would save time, but only in those cases in which we might execute an adult.

In short, this is not a context in which we can defend using our rule by saying we must do so in order to function. Nor is it easy to dismiss the errors we would make in employing our rule as unimportant slips that are not worth a great deal of trouble to avoid: they are miscarriages of justice, after all. On the one hand, they are errors in which we fail to give the wrongdoer what she deserved because we underestimate how badly she acted. On the other, they are errors in which we fail to treat equally culpable miscreants equally, since the adolescent gets off more lightly than the adult who was (in fact) no more culpable than she, and possibly even less so.

The other elements of the potential defense are at best claims in need of support. It hasn't been shown that there are only a few exceptions to the generalization that adolescents act less culpably than adults. Nor is it clear that considering adolescent culpability case-by-case would be no more accurate than employing the rule: certainly we think individualized consideration is more accurate when the defendant is an adult, and there is no reason to think that adolescence makes an individual's culpability especially opaque to us.

In sum, there are good reasons to doubt that we ought to employ the rule guaranteeing every adolescent a milder punishment than his adult counterpart. Essentially, it isn't clear that this rule would be especially useful or desirable. Admittedly, my argument to this conclusion has assumed that the burden is on those who want to abandon

an individualized approach to culpability: I have assumed that we should consider cases individually unless there is good reason not to do so. This might be resisted on the ground that to individualize is to grant discretion, with discretion taken to be objectionable for a variety of reasons.[11] The individualized approach I am recommending for juveniles, however, is hardly the sort in which all decisions are ad hoc and the judge is expected to deploy resources of personal wisdom in the manner of King Solomon.[12] I am recommending only that we treat adolescents in the same way as we do adults, individualizing our consideration of them to the same extent we do that of adults we try for the same offenses. The discretion afforded by doing so has a variety of limits.[13]

More generally, I agree with Carl Schneider's thesis that the proper question is not whether to allow discretion or insist on rules, but which mix of rules and discretion is best for the particular task at hand. As he argues, "The less risk of bias, the greater the need to ask whether substituting rules for bias, the greater the need to ask whether substituting rules for discretion would be more costly than

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[11] For extended discussions of discretion, see *Discretion and Welfare*, edited by Michael Adler and Stewart Asquith (London: Heinemann, 1981), *Discretionary Powers: A legal Study of Official Discretion*, by Dennis Galligan (Oxford: The Clarendon Press, 1986), and *The Uses of Discretion*, edited by Keith Hawkins (Oxford: The Clarendon Press, 1992).

[12] Carl Schneider dubs this "khadi-discretion", after Max Weber's concept of khadi-justice. He borrows the following characterization from A. T. Kronman's *Max Weber* (Stanford: Stanford University Press, 1983): . . . cases are decided on an individual basis and in accordance with an indiscriminate mixture of legal, ethical, emotional and political considerations. Khadi-justice is irrational in the sense that it is peculiarly ruleless: it makes no effort to base decisions on general principles, but seeks, instead, to decide each case on its own merits and in light of the unique considerations that distinguish it from every other case . . . The characterization of khadi-justice as a substantive form of law-making highlights another of its qualities, namely, its failure to distinguish in a principled fashion between legal and extra-legal (ethical or political) grounds for decision. It is the expansiveness of this form of adjudication-its willingness to take into account all sorts of considerations, non-legal as well as legal – which gives it its substantive character; the idea of a limited and self-contained 'legal' point of view is foreign to all true khadi-justice (pp. 76–77). Quoted in Schneider's "Discretion and Rules: A Lawyer's View," *The Uses of Discretion*, ed. Keith Hawkins (Oxford: The Clarendon Press, 1992), p. 62.

[13] See A. J. Reiss, "Discretionary Justice in the U.S.," *International Journal of Criminology and Penology* 2, 1974, 181–205.

running the risk of bias . . . "[14] Considering adolescents individually does not seem to allow bias an entry in the way (it has been argued) it would if we were to allow judges considering custody arrangements to consider the fact that a child's mother has now married someone of a different race.[15] For it isn't as if judges and the community from which they come have a history in which it is considered taboo to be an adolescent, and might have their discretionary decisions colored by disapproval of those who violate this taboo.

Thus, adolescents do not need the protection of rules. Moreover, everyone involved when an adolescent commits a crime is entitled to just as careful a consideration of the particulars as they would be if the wrongdoer were an adult. For these reasons, Justice O'Connor's rule conferring lesser culpability on adolescents is both unnecessary and undesirable.

This brings us to a third version of the lesser-culpability thesis. Rather than saying every adolescent who is found guilty *must* be treated as having acted with diminished culpability, suppose we let that be a rebuttable presumption. To make it a presumption means the defendant need not prove that he acted under mitigating circumstances: it will be taken for granted that he did unless the prosecution proves otherwise. To make the presumption rebuttable means the prosecution does have the opportunity to prove otherwise, unlike the guaranteed lesser culpability we have been discussing.

Since adult defendants are not granted this same presumption, affording it to adolescents is a third way of taking them to be less culpable than adults. Unlike the first way, this third way does not deny that there could be an exception, an adolescent who was at least as culpable as his adult counterpart. Unlike the second way, it allows the state to establish that a particular defendant is that exceptional adolescent. Moreover, whereas it wasn't clear that a judge deciding what someone deserves needs to employ any absolute rules about age groups, it is necessary for a trial to make some presumption and distribution of the burden of proof. That is, either we must presume that the guilty defendant is fully culpable and make it her burden to show that there were mitigating circumstances, or we must presume that the mitigating circumstances were present and

[14] Schneider, p. 71.

[15] See *Palmore v. Sidotti*, 466 US 429 (1984).

make it the state's burden to show they were not. We have no third alternative. The proposal is to choose the latter rather than the former: to presume there were mitigating circumstances where adolescents are concerned.

The question to ask is why that is the right choice. There are several possible answers; none, I think, is successful. Let us consider first the idea that adolescence is a time of ignorance.

II

> Inexperience, less education, and less intelligence make the teenager less able to evaluate the consequences of his or her conduct . . . [16]

What is it, exactly, that teenagers are supposed not to know? The first possibility is that they are unaware of part of what is wrong with their behavior. For example, you and I know that a person whose home is burglarized can lose not only whatever possessions the burglar takes but also her sense of home as a place of ease and refuge. That is a serious harm burglars do. Burglary is wrong in other ways as well, of course, some of them perhaps more serious, but this is part of the story.

It might be suggested that a burglar who did not know that he was harming his victims in this way would not deserve as harsh a punishment for his burglaries as one who knew it perfectly well. It might further be suggested that the typical adolescent burglar is the ignorant kind, who does not fully understand what he is doing. Typically, the claim would be, adolescents are just too young to know all that is wrong with their behavior, and so they are less blameworthy than their adult counterparts. This argument gives a particular content to assertions such as the following: ". . . children, at least by adolescence, may justifiably be held accountable for their delinquent acts but, *because they lack important life experience*, not to the extent of responsibility extended to adult criminals."[17]

Even if the reasoning works for some crimes, however, it is hard to see how it would work for all. Take murder, for example. The main thing wrong with murdering someone is that you take this person's

[16] *Thompson v. Oklahoma*, 108 S.Ct. 2687, 2699 (Justice Stevens for the plurality).

[17] Gardner, 'Punitive Juvenile Justice', p. 142, n. 99, emphasis added.

life against his will. The Billy Thompsons of the world certainly know that much about it. Indeed, if they did not know they were taking someone's life against his will they would not be guilty of murder at all, but of some lesser crime. And the thesis, remember, isn't that adolescents cannot commit murder, but that the ones who do commit it are (typically) less culpable than adult murderers.

What we need is an extra, additional wrong done in committing murder, a wrong that adolescents do not realize they are doing because they lack experience in life. There are no obvious candidates. It is wrong to cause the victim's loved ones grief and to take him from their lives, but surely the typical adolescent murderer knows that killing someone has these consequences. It is wrong to act in ways that make others in the community afraid, but adolescents know as well as anyone that murders are hard on the general peace of mind. In short, ignorance of relevant facts does not seem to be the reasonable presumption where some crimes are concerned.

Nor does it seem the reasonable presumption where some *adolescents* are concerned, I want to suggest, though this requires explaining. First, as Andrew Walkover remarks, the reason we make something a presumption is that it is the way things normally are: "In essence, normative behavior is presumed (i.e., the accused is sane, not intoxicated, not compelled to commit the crime, etc.) . . . "[18] We think it is better to assume things were normal and require proof that they were not than the other way around. Notice that this has nothing to do with our thinking that a defendant is entitled to be presumed innocent. As Walkover's illustrations show, in assuming normalcy we don't assume that the defendant had an excuse, and so presume her to be innocent, but just the reverse: we assume she had none, because we take that to be the normal state of affairs. We assume she was sane, not that she was insane; that she was sober, not that she was drunk; that she acted freely, not that someone made her do it. Evidently, then, in presuming normalcy we are not aiming to protect defendants, but to distribute the burden of proof expeditiously. This expeditiousness might work against the interests of the defendant, but (evidently) that in itself is not a grave objection to it.

[18] "In essence, normative behavior is presumed (i.e., the accused is sane, not intoxicated, not compelled to commit the crime, etc.)" (Walkover, 'The Infancy Defense in Juvenile Court,' p. 555. fn. 231).

Consider now the presumption that adolescents who commit felonies are typically unaware of part of what makes the behavior wrong. The sort of adolescent who has never thought much about felonies might very well be ignorant in this way. As far as the adolescents who go in for this sort of thing are concerned, however, it is not a very plausible picture at all. Indeed, as a group, the adolescents who commit felonies tend to be unusually knowledgeable about what they are doing, because they tend to be repeaters.[19] Earlier arrests will have acquainted them with the range of objections to their behavior. Obviously, that information has not moved them to change their ways, but we can hardly say they have *no idea* how upsetting people find it to be mugged or burglarized (say). They know it perfectly well, typically, because typically they have done these things before and have been told about them.

If our presumptions ought to reflect the norm, then what we should presume is not that the adolescent convicted of a felony acted in partial ignorance, but just the reverse. We should assume he was knowledgeable and allow him the opportunity to prove otherwise, just as we would with an adult. For that is the normal state of affairs where adolescent felons are concerned, just as it is where the defendant is an adult. This presumption will work against the interests of the defendant, but, as noted, that in itself is not a serious objection to it.

As an alternative form of the view that adolescents act in ignorance, consider next the idea that even when adolescents do "know what they are doing," their knowledge is only rather superficial:

> There is also ... an exculpatory aspect to the defense of infancy. It derives from the limited ability that children have both to appreciate the risks of doing certain things *and to appreciate the significance of the resulting harm* ... [This] requires a social intelligence that the young are only in a process of developing, and because of their more meager capacities it would be wrong to treat the young as fully responsible.[20]

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[19] For statistics to this effect, see Marvin E. Wolfgang, 'Abolish the Juvenile Court System', *California Lawyer*, November, 1982 or Katherine Hunt Federle, 'The Abolition of the Juvenile Court: A Proposal for the Preservation of Children's Legal Rights', *Journal of Contemporary Law* 16 (1990).

[20] Hyman Gross, *A Theory of Criminal Justice* (Oxford: Oxford University Press, 1979), p. 151, emphasis added. Not everyone agrees: "Evidence from several studies substantiates the theory that children under 14 vary greatly in their subjective perception of the seriousness of various crimes, but that by age 14,

By way of illustration, suppose that an adolescent shoots someone. He knows that he is killing this person, of course. It might be urged, though, that at his age he has not yet had much of a life, and so he has little conception of what it is for a life to end. For example, although he would give the right answer if we asked him whether being killed meant you didn't get to see your children grow up, he is too young to appreciate what a loss that is. So although he "knows what he is doing," and recognizes the consequences it has, he has too little life experience to understand those consequences and so cannot appreciate the enormity of what he is doing. Hence, he is less blameworthy for doing it than someone who did appreciate this would be.

By way of reply, we might note first that this move too works for only a few offenses at best. There may be some appeal in saying that adolescents don't fully appreciate what it is to lose one's life.[21] There is no similar plausibility, though, in saying, for example, that an adolescent's youth makes pain a mystery to him, so that any aggravated assaults committed by adolescents are committed without appreciating what the victim suffers. Similarly for crimes of property: it might be hard to fully grasp what someone loses if you take her life, but what she loses if you take her VCR seems well within the ken of the normal adolescent.

More radically, we might also question the premise that it is always less blameworthy to do a wrong you do not fully appreciate than it is to do the same wrong knowingly. Take rape, a crime that certainly might be understood only dimly or more thoroughly. Suppose there were two serial rapists. The first has little appreciation of the damage he does to the women he rapes, though he does know "superficially" that it occurs. The second understands the harm he is doing more fully, though this does not deter him.

Are the second man's rapes necessarily more blameworthy than the first man's? Certainly they are knowingly cruel in a way the first rapist's are not, because he knows what he is doing. On the other hand, at least the second rapist is tuned in to human suffering, picks up clear signs; the first man rapes repeatedly without ever coming to

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their perceptions mirror those of adults" (Marvin Wolfgang, 'Abolish the Juvenile Court System', *The California Lawyer*, November, 1982, p. 13).

[21] Perhaps that is because this is so deep a matter as to be mysterious to us all. If so, it ought to mitigate all murders, not just the ones committed by adolescents.

understand how terrible a thing he is doing to his victims. That level of obliviousness is monstrous in its own way. I am not at all sure it is in fact less monstrous than a capacity for cruelty, nor that the rapes he commits are less blameworthy, rather than merely blameworthy in a different way. If this reasoning is sound, then even if adolescents do fail to appreciate what they are doing, it need not follow that they are less blameworthy for doing it.

Of course, this reasoning does turn on the first rapist being to blame for not appreciating what he is doing, taking that to display a serious moral fault. It might be urged that adolescent failures to appreciate are a different matter entirely. The idea would be that the reason that adolescents don't appreciate what they are doing is that they are simply too young to do so. Since it is not their fault that they are young, it is not their fault that they are ignorant. So, their failure to appreciate what they are doing does make them less blameworthy, the argument would conclude, whatever might be true of adult rapists.

But why should we agree that adolescent indifference must be due to youth rather than to moral flaws? It isn't as though adolescents cannot have moral flaws, as though we have no character until we grow up. Nor is "He's just too young to appreciate what he made you go through" plausible for every indifference to the suffering one person inflicts on others. We would never credit such a remark if a sixteen-year-old hit someone with a hammer, for example, as we might if a toddler did. Evidently, we think some appreciation is within the adolescent's grasp: we doubt it really is lacking, and, if it is, we think that it is an appreciation she should certainly have developed by now. In the same way, if it were claimed that an adolescent was unable to appreciate the very substantial harms she knew she was doing in the course of committing a felony, the plausible reaction might be to regard this as unlikely at best and (even if true) as not a mitigating factor.

As a last form of the view that the typical adolescent acts in ignorance, suppose we flesh out the following remark:

> . . . children's deviant behavior may be regarded as generally less culpable than similar adult behavior for the reason that the child's . . . capacity to know right from wrong . . . is not as fixed or as absolute as an adult's.[22]

[22] Walkover, 'The Infancy Defense in Juvenile Court', p. 545. Gardner adopts a similar view, quoting with approval this passage from the *Institute of Judicial*

What adolescents typically lack is not knowledge of the facts, that is, but a moral understanding of them. Granted, the reasoning goes, the typical adolescent felon may be no more deficient than the typical adult when it comes to realizing that his behavior will do the harms it does, nor even when it comes to understanding those harms sufficiently to be said to appreciate them. Still, adolescents are in the process of developing their values, and they are not very sophisticated morally. They lack skill at making comparative judgments, at placing a bit of behavior on a scale relative to other deeds. So, although they can certainly know that what they are doing is wrong, they aren't very good at grasping how wrong it is. In that sense, they tend not to fully understand what they are doing; and this makes them less blameworthy than someone who does.

As a first point in reply, we should note that this theory of adolescent moral development is only a speculation. According to Marvin Wolfgang, "Evidence from several studies substantiates the theory that children under 14 vary greatly in their subjective perceptions of the seriousness of various crimes, but that by age 14, their perceptions mirror those of adults."[23] Michael Pritchard cites a study to the effect that children as young as four "have an intuitive grasp of the differences among prudential, conventional, and moral rules"; they are said to be short on "reflective understanding" but long on "an intuitive moral competence that displays itself in the way they answer questions about moral rules and in the way they excuse their transgressions and react to the transgressions of others."[24] The point is not, of course, that even four-year-olds should be held fully culpable, but that it is far from obvious what we should presume adolescents to lack by way of moral sophistication.

Moreover, although certainly the task of evaluating an action morally can be demanding, felonies are not exactly replete with moral nuance. Not much sophistication is required to recognize that taking items of value from someone's apartment is in a different league than murdering him, and that shoplifting from Wal-Mart is

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Administration and American Bar Association, Juvenile Justice Standards Dispositions: "Juveniles may be viewed as incomplete adults, lacking in full moral and experiential development" ('Punitive Justice', p. 143, fn. 100).

[23] Wolfgang, p. 13.

[24] Michael Pritchard, *On Becoming Responsible* (Lawrence, Kansas: University Press of Kansas, 1991), p. 22.

trivial compared to taking the social security check on which someone survives from month to month. Granted, adolescents are not the first people to whom one would turn for advice about a moral subtlety, but it seems reasonable to suppose they can make judgments such as these as well as anyone else.

In this section, I have argued against presuming that adolescent felons are diminished in their culpability because they lack knowledge. My arguments have addressed in turn the idea that the typical adolescent felon does not know her behavior will do all the harms it does, that she does not appreciate the harms she knows she is doing, and that she lacks the moral sophistication to judge how bad it is to do them. If I am right, none of these is a respect in which the typical adolescent felon is defectively culpable.

III

"I didn't know what I was doing" is not the only excuse, of course: there is also "I couldn't help it." Perhaps what mitigates adolescent felonies is that adolescents act under pressure. Several writers appear to think so, including Justice Stevens:

> . . . he or she is much more apt to be motivated by mere emotion or peer pressure than is an adult.[25]

> . . . children's deviant behavior may be regarded as generally less culpable than similar adult behavior for the reason that the child's capacity to be culpable – e.g., his capacity to know right from wrong *and to control impulses* – is not as fixed or as absolute as an adult's.[26]

> . . . they deserve less punishment because *adolescents have less capacity to control their conduct and to think in long-range terms than adults.*[27]

As a beginning, let us take these remarks to assert that adolescents are not only more "apt to be motivated" by emotion, peer pressure, and impulses of the moment, but more apt to be swept away by these, to find them so strong as to be irresistible. Jeffrey Blustein takes adolescence to be like this:

> The desire for food of a starving man may be so intense that it is felt by him to be overwhelming, and if he has no money and can only satisfy his hunger by

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[25] *Thompson v. Oklahoma*, 108 S.Ct. at 2699.

[26] Walkover, p. 545, emphasis added.

[27] Feld, 'Juvenile Court Meets the Principle of Offense', p. 899, fn. 385.

stealing, he steals. The desire for food, normally quite manageable, is under these circumstances irresistible.... Analogously, the adolescent may have anti-social impulses that it would be unreasonable to expect him to resist because he is in a condition that weakens his defenses against gratification of these impulses. Like the starving man who, because he is starving, is less able to resist his impulse to steal than a person in a normal condition, the adolescent, because he is an adolescent, is less able to resist his anti-social impulses than a normal adult... his weakened condition intensifies his impulses to such an extent that they become compelling.[28]

Blustein should be no friend of the lesser-culpability thesis, however; the implication of his analogy is not that adolescents are merely less culpable than adults but that, like starving men who steal, they are not culpable at all for caving in. That is surely the plausible inference, if adolescence puts us as much at the mercy of our hungers as starvation does. Our question was how to derive a different conclusion – namely, that adolescents may well be culpable but are typically less so than adults who act in the same ways.

If the starving-man analogy is too strong for the task, let us try a variation. First, calling an impulse irresistible is sometimes an excuse, certainly, as with the starving man, but it is not always one. That is, there are times when a person should have been able to resist, even though in fact he could not do so. Most adults do manage to resist at times like those. Adolescents should resist too: but, typically, they cannot. This does not excuse them from responsibility any more than it would excuse an adult, since they should have been able to resist. Perhaps it does mitigate their responsibility, however? For to be swept into doing something by pressures you should have been able to resist seems less blameworthy than doing the same thing perfectly freely. In short, the contention would be that the reason adolescents are less culpable than comparable adults is that adolescent misbehavior is produced by pressures that the adolescent should have resisted, whereas adults have outgrown those pressures and misbehave for more culpable reasons.

By way of reply, we might first question whether it would always mitigate a misdeed if you did it because you could not resist peer pressure (say). For example, it would be bad enough for you to choose to steal your mother's cherished heirloom and sell it because

[28] Jeffrey Blustein, 'Adolescence and Criminal Responsibility', *The International Journal of Applied Philosophy* 2 (1985), p. 9.

you wanted money for yourself, but to do this just because the guys put pressure on you might actually be worse in some ways. Certainly your behavior would be distressing in a different way, by showing how thoroughly you allow yourself to be dominated by them. The hypothesis was that these are pressures you should have been able to resist. It is not obvious that your inability to do so is less blameworthy than theft out of simple selfishness would be.

In addition, another part of the argument is that adults are not enacting a similar weakness *vis-à-vis* pressures when they commit the same felonies as an adolescent. But why should we believe this? Why should we believe that minor gangsters who happen to be grown up are any less under the sway of their gang leader's strong personality, any less dependent on the opinions of others for their self-esteem, and so on? Perhaps some adolescents are less autonomous than we want them to be, and perhaps some adult criminals are fully autonomous. It seems likely, however, that other adult criminals are just as weak of character as adolescents.

I suspect the reason we don't extend the same mitigation to adult weaklings as we do to adolescents is not that we think adults are less vulnerable to pressures than adolescents, but that we think they should be less vulnerable. We think an adult should have grown out of this dependence. If so, our practice works against the argument under discussion. For the contrast the practice draws is that whereas adult weaklings are responsible for their lack of character, adolescents are not, having not yet had time to outgrow it. But if adolescents are not responsible for being weak, then we ought not to blame them for it at all, any more than we would blame a four-year-old at all for being too weak to lift a weight. In short, this argument is too strong to support the lesser-culpability thesis, in the same way that the analogy to a starving man was too strong to do so.

Finally, it might be doubted that the urges and impulses of adolescents are quite so overpowering as Blustein suggests. It might be hard for a fourteen-year-old to resist a yen to shoplift and even hard to resist the desire to be one of the group who urge her to do so. However, the desire for food when you are starving is our paradigm of the irresistible: are the urges of adolescence *that* strong? We might

well be skeptical of the analogy, even after being told that adolescents "lack ego-strength" and "have unstable concepts of themselves."[29]

Still, even if adolescents are not literally overcome by their urges, perhaps they are obliged to struggle against these in a way adults need not. For example, perhaps for an adolescent to "just say no" requires courage this does not demand of an adult, because adolescents simply care more about the opinions of their peers. If so, an adolescent who has the wrong peers must overcome something powerful in order to do the right thing. Sometimes, she may fail to overcome it and so do wrong. But to do wrong when it is hard not to do wrong is less blameworthy than to do it when you could easily have done otherwise, it seems. Might this be the basis on which adolescents should be presumed less culpable than adults who commit the same acts?

Not exactly. Again, for the sort of crime in which the criminal is a minor partner to others it seems plausible to suppose that the typical adult finds peer pressure just as powerful as the typical adolescent. Moreover, as Blustein points out, "... much juvenile crime is committed by adolescents who use gangs as vehicles for their delinquencies and not in response to the threat of expulsion from or loss of status in a valued peer group."[30] If so, many adolescents who commit crimes are more independent than the argument credits them with being. They are not good children whose bad companions influence them to act in ways they otherwise would not, but autonomous individuals who have found a way to do what they want and like-minded companions with whom to do it.

As a case in point, consider once more Billy Thompson, with whom we began. At fifteen, Billy was certainly the youngest of the group who murdered Charles Keene, but accounts of his participation make him sound at least their equal in moving the action along:

> Thompson's girlfriend helped him take off his boots and heard him say "[W]e killed him. I shot him in the head and cut his throat and threw him in the river," ... One witness testified that she asked Thompson the source of some hair adhering to a pair of boots he was carrying. He replied that was where he had kicked Charles Keene in the head. Thompson also told her that he had cut Charles' throat and chest and had shot him in the head.... Ultimately, one of Thompson's codefendants

[29] Jeffrey Blustein, 'Adolescence and Criminal Responsibility', *The International Journal of Applied Philosophy* 2 (1985), pp. 9–12.

[30] Blustein, p. 7.

admitted that after Keene had been shot twice in the head Thompson had cut Keene "so the fish would eat his body." Thompson and a codefendant had then thrown the body into the Washita River, with a chain and blocks attached so that it would not be found.[31]

It could be, of course, that Billy did these things at least partly out of concern for his status with his three friends. But it could also be that his friends provided muscle rather than motivation, and simply helped him do something he had independently in mind. Which story is true should certainly be open to argument. But there is no compelling reason to presume that he did not act as his own man, it seems to me, even after we have heard the theories about the psychology of adolescence.

IV

In arguing against the view that adolescents who commit felonies should be presumed to have acted under mitigating circumstances, I have taken up the various possibilities one by one. Thus, I argued first against taking the typical adolescent felon to have acted without knowing some of what is wrong with his behaviour, then against taking him not to have appreciated the harms he knew he was doing, then against taking him not to have understood the moral significance of those harms. I then argued against the idea that the typical adolescent felon cannot help doing what he does, or does it only because he has lost a distinctive struggle against outside influences. If my arguments are sound, none of these is a way in which the typical adolescent felon's behaviour is less than fully culpable.

It might be replied that his only shows that the lesser-culpability thesis should be disjunctive in form. Granted, that is, no particular mitigating factor is typical of every case in which an adolescent commits a felony, but what *is* typical is for some mitigating factor or other to be present. Some adolescent felons are ignorant in one way, others are ignorant in another, and still others are not ignorant but act under pressure. There are exceptions who act utterly without mitigation, of course, but they are exceptions. Once they are set aside, we find a class whose behaviour is mitigated by one consideration or

[31] *Thompson v. Oklahoma*, 108 S.Ct. at 2712.

another, and who therefore should be presumed to have acted with lesser culpability.

There are two problems with this strategy. The first is that it assumes that each form of the factors does mitigate, if it obtains. I have argued that not all of them do. For example, failure to appreciate a harm one knew one was doing in committing a felony might not have this effect, I argued, because those harms can be so easy to appreciate that the failure to manage it makes things worse rather than better, even in an adolescent. Similarly, the fact that the defendant was yielding to pressures that were overwhelming for him might make his behavior worse, rather than better, because it is so clear that those pressures ought not to have been overwhelming. If those arguments are sound, satisfying some elements of the disjunction might not suffice to mitigate.

Second, the underlying contention of the disjunctive strategy is that, apart from the exceptional villain, those who do not satisfy one disjunct will satisfy another. That is plausible enough, if we have one sort of case in mind. It is easy to imagine that someone who does not act in the first kind of ignorance might, at least, have acted in ignorance of the other kinds – that although she is not simply *unaware* of the harms her behavior does, she does fail to appreciate them and also how badly she is acting. Beyond this instance, however, it seems more plausible that those who escape one kind of ignorance will also escape the others – just the reverse of what the disjunctive strategy requires.

For example, take someone who knows the harms her behavior does and appreciates those harms. It is possible that she lacks a moral understanding of them and so does act in ignorance after all, but it is not very likely. The reason is that the process by which she learned to know and appreciate the harms she would do if she were to act in a certain way is not likely to have been free of moral comment, a sort of scientific education in the physics of human billiards. It is far more likely that in learning to appreciate what would happen to others if she acted in various ways she has also learned a good deal about which actions are worse and which are not so bad. Thus, if she knows and appreciates what she is doing, she is unlikely to satisfy the disjunction by lacking moral understanding.

Similarly, someone who has a moral understanding of what he is doing won't be ignorant by way of not realizing it has the consequences it does or by not appreciating those consequences. For he must grasp and appreciate the consequences *in order* to understand how badly he is acting. The defender of the disjunctive strategy could respond by saying that although persons of these kinds are not ignorant, they satisfy other elements of the disjunction. Specifically, they are either compelled to act as they do, or they act in the throes of a struggle for acceptance. This appears at best to be an article of faith, however. Like a loving parent, it presumes that the adolescents who commit felonies simply could not have freely, knowingly done wrong. Loving parents may need no reasons for their faith, but the legal system should require them.

We might derive one further argument for lesser culpability from the last of Justice Stevens's remarks in the passage quoted: "The reasons why juveniles are not trusted with the privileges and responsibilities of an adult also explain why their irresponsible behavior is not as morally reprehensible as that of an adult."[32] When the subject is whether to marry someone, where to live, or even whether to have a drink, we take adolescents to be less mature than adults. As Chief Justice Burger put it in *Parham v. J.R.*, "Most children, even in adolescence, simply are not able to make sound judgments concerning many decisions . . . Parents can and must make these judgments."[33] Now that the question is what they deserve for doing wrong, the proposal is that they are equally mature. That seems inconsistent; how can we have it both ways?

Part of the answer is that not all decisions are alike in the maturity they demand, so that it is perfectly possible to be sufficiently mature to handle the question whether to shoot someone but not the question whether to marry him or her. As Justice Scalia puts it, with fine rhetorical scorn, "It is surely constitutional for a State to believe that the degree of maturity that is necessary fully to appreciate the pros and cons of smoking cigarettes, or even of marrying, may be somewhat greater than the degree necessary to appreciate the pros and cons of brutally killing a human being."[34]

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[32] Id. at 2699.

[33] *Parham v. J. R.*, 442 U.S. 584 (1979) at 603.

[34] *Thompson v. Oklahoma*, 108 S.Ct. at 2718, n. 5: "I leave to a footnote my discussion of the plurality's reliance upon the fact that in most or all States,

By the same token, to reject the view that adolescents cannot be fully culpable for felonies is not to take the view that ". . . there is no significant difference between even younger adolescents and adults with respect to the possession of capacities required for responsibility . . . " and hold that "there is no typical adolescent as opposed to mature adult at all . . . "[35] It is only to say that the differences are not so large as to matter when someone commits a felony, however readily those same difference might mitigate adolescent behavior that is merely stupid or inconsiderate.

It might also be worth allaying the fear that to accept the arguments I have offered commits us not just to treating adolescents as if they were adults but also to treating even younger children as if they were: to mounting a full criminal trial for the eight-year-old bully and, if he is found guilty, giving him the same penalty as we would an adult who had committed a similar assault, to inflicting a similar procedure on the toddler who managed to discharge Daddy's pistol with tragic results, and so on. First: I have argued against that I have called the lesser-culpability thesis, according to which those who are of an age we consider capable of criminal culpability are systematically taken to be less culpable than adults. My arguments about them have no implications for those we consider to be incapable of being culpable at all, like the toddler. There are good reasons for the deeply held belief that there is an age below which a child is an innocent.[36] I have been discussing those who are past the age of innocence: nothing I say denies that there is such an age, and that trials for toddlers are therefore misguided.

Nor have I offered an argument as to when the age of innocence ends and the age of potentially equal responsibility begins. So, accepting what I have said does not commit one to a view about trying eight-year-old bullies for assault. Whether we should do that largely depends on what it is to be morally responsible for such an

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juveniles under 16 cannot vote, sit on a jury, marry without parental consent, participate in organized gambling, patronize pool halls, pawn property, or purchase alcohol, pornographic materials or cigarettes . . . "

[35] Blustein, p. 3.

[36] For analyses of innocence, see Peter French, "Losing Innocence for the Sake of Responsibility," *Responsibility Matters* (Lawrence, Kanas: University of Kanas Press, 1992), and my own "Innocence," *American Philosophical Quarterly* 31 (1994): 157–168.

action and on whether someone of that age has what it takes, two important matters with which I have not been concerned. I have argued only that among those who are agreed to have what it takes, those who are 14 – 18 ought not automatically to be considered less culpable than anyone else.

V

To treat culpable adolescents in the same way as we treat culpable adults is likely to seem unbearably harsh, for a number of reasons. It may not be too melodramatic to say that treating them this way forces us to see some children as already completely lost, despite their tender years. Every child had a time when he was sweet and innocent and the world had possibilities for him. Now those possibilities have narrowed to a life that will be dangerous and filled with unhappiness, and they have narrowed with a terrible swiftness.

That is tragic, in rather the same way as it is tragic when a child dies. Such things shouldn't happen to a child, we say. If they must happen, there should at least be more time for happier days before they do, or this small person will not have had a fair chance at life. That feeling can be strong, but it is not a good reason to insist that a child cannot be as culpable as an adult, any more than it is a good reason to insist that a child cannot already have died.

Also, usually the idea of treating adolescents as just as culpable as adults conjures images we find horrifying to contemplate. To think of sending a fourteen-year-old to prison, even if he did sell the quantity of drugs that calls for this under Federal Sentencing Guidelines, prompts us to react that shouldn't be subjected to that.

Perhaps, of course, the reason he shouldn't be subjected to it is that no one should. Perhaps the penalty is just excessive, something we now realize because we are told we must inflict it on someone about whom we are inclined to care, as part of a general sentimentality about children, rather than on someone whom wee have demonized as part of a criminal underclass. Alternatively, we might be thinking that someone this young will be horribly abused if sent to prison, because he will be unable to defend himself against the monsters who live there. That may well be true, but it is not a reason to claim that the child deserves a milder penalty than an adult would. Instead,

it is a reason to be careful about which penalties are equal ones, in terms of the suffering they inflict.

If a fourteen-year-old is as culpable as an adult and if felons should be sentenced to the punishments they deserve, then the fourteen-year-old should be punished as severely as an adult. But perhaps felons ought *not* to be sentenced to the punishments they deserve, or perhaps at least *young* felons should not? For example, perhaps we should be merciful to young wrongdoers, instead of exacting the full measure of the law.

That is a deep and interesting question, worthy of extended discussion. Here it must suffice to say that it does not suggest a way of defending the thesis that young wrongdoers are less culpable than their adult counterparts. What it suggests instead is that we should treat the young more leniently even though they are *equal* in culpability, clearly a different thesis than the one under discussion.

Similarly, it might be urged that we should not aim exclusively at giving wrongdoers what they deserve but also at rehabilitating them. The reason adolescents should be treated differently than adults, the argument would continue, is that adolescents are more susceptible to rehabilitation, less firmly habituated to a criminal way of life.

According to some, however, rehabilitating the youthful offender is not something we even know how to do.[37] If they are right, this argument collapses: we cannot justify giving rehabilitating greater weight where juveniles are concerned on the ground that we have better chances of success. Moreover, as with the contention that a person's youth calls for us to be merciful to him, to say that it calls for us to try to rehabilitate him clearly differs from saying that it makes him less culpable. This is not a way to defend the lesser-culpability thesis, that is, but a way to raise a different thesis altogether.

The thesis it does raise is that the young should be provided the typically less harsh measures intended to correct their paths, even

[37] In 'The Juvenile Court and the Role of the Juvenile Court Judge' (*Juvenile & Family Court Journal* (1992): 1–45), Judge Leonard P. Edwards cites in particular Janet E. Ainsworth's 'Re-Imagining Childhood and Reconstructing the Legal Order: The Case for Abolishing the Juvenile Court' (*North Carolina Law Review* 69), and her conclusion that "The depressing conclusion, by and large, was that nothing worked." At p. 17, n. 113, Judge Edwards notes the studies on which Ainsworth relied; at p. 10, n. 56, he notes other studies which he takes to show "that juvenile court interventions are effective."

if they are every bit as culpable as the adults we treat punitively instead. As with the idea that the wrongdoer's youth should always make us merciful, this requires a fuller discussion that I can give it here. It is not, however, the view taken by those who have offered the best available arguments for ignoring the adolescent's culpability and concentrating on reclaiming her. They don't contend that adolescents should be treated differently in this way, but, instead, that *every* offender should be treated non-punitively:

> We might suppose that as adults get older, deviant identities might become more encrusted and harder to change ... For some such people such a process probably occurs. But as data on the relationship between age and deviance shows ... reversion from deviant to mainstream identities is the norm with progressing age. Thus the idea that shaming and reintegration ceremonies are valuable only for the young is not well founded. Indeed, preliminary qualitative evidence indicates that it may be extremely valuable for individuals well into middle age.[38]

Finally, it is worth considering whether an adolescent who is convicted of a felony is likely to be the sort of person we might be imagining – to be, in fact, ourselves at that age, more or less. If he is like that, of course, there is nothing to preclude his demonstrating it. He is free to show that he has never been in trouble of any kind before this, or that he isn't very bright and fell under the control of someone who was, and so on. To abandon the lesser-culpability thesis is only to say that he ought not to be *presumed* to be like this. A good reason to abandon that presumption is that he probably isn't, partly because the juvenile system includes a filter through which he has passed. According to a distinguished judge in the system. "As things are, only the most serious delinquent acts reach the stage of juvenile court. Not all are reported, those that are are often resolved short of formal legal action, and of those that reach the court most are disposed of by agreement with only a minority being tried."[39]

So, the adolescent we are considering is one whose history and conduct have not stimulated others to give him a break, and who is not only tried but convicted. It may be that we should treat him more

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[38] John Braithwaite and Stephen Mugford, "Conditions of Successful Reintegration Ceremonies: Dealing with Juvenile Offenders," *British Journal of Criminology* **34** (1994): 151–152 (citations eliminated). See also *Crime, Shame and Reintegration*, by John Braithwaite (Cambridge: Cambridge University Press, 1989), and *Not Just Deserts*, by John Braithwaite and Philip Pettit (Oxford: The Clarendon Press, 1990).

[39] Edwards, 'The Juvenile Court and the Role of the Juvenile Court Judge', p. 8.

leniently than we would an adult because we should be merciful to our young people or because we should strive to rehabilitate them. It is not the case, I have argued, that we should treat him mor leniently because his youth makes this the treatment he deserves.

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