Developmental Competency

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Society progressively has been giving children and adolescents a greater degree of autonomy in the decisions affecting their own lives. This increase in responsibility has followed the corresponding increases and awareness of their rights and developmental needs. In this article, a review of the historical development of competency in children is presented. The status of current psychiatric thinking and science is reviewed and the areas of much needed future research are addressed. A general schema is proposed for practical application in balancing parental input with increasing self-control of the child's decisions. Developmental competency of children is a difficult and complex issue that requires careful attention in its assessment.

Society has increasingly become interested in the competency of its citizens to handle their own affairs and their share of the affairs of state. When nations were ruled by feudal chieftains, kings, or dictators, there was little reason to be concerned with individual competency. Decisions were made for the ordinary person, leaving few responsibilities except to obey. People had few rights. This was particularly true of children and women. Even as men were gaining their rights (and autonomous responsibilities), children and women were lagging behind. Despite the Anglo-American tradition, one of the more progressive social experiments in recorded history, children and women remained little more than mere chattel of adult men (first fathers, then husbands) until the 1800s. Children, although seen as miniature adults when it came to criminal responsibility, were not accorded the rights that should have accompanied such status. Adult status was usually accorded with the achievement of pubertal maturation. For Jewish young men, manhood was achieved at their Bar Mitzvah, at age 13 or 14 years. Christians similarly would receive confirmation or "join" the church at the same age, demonstrating their maturity and religious majority. In the Church of Jesus Christ of Latter-day Saints, when Mormon boys reach 12 years of age they are eligible to join the priesthood. Puberty was the biologic marker that coincided with the transition from childhood to adulthood in most world cultures.

Along with the Women's Rights Movement of the late 1800s, a changing view of children and adolescents emerged. New emphasis was placed on growth and development, including psychologic maturation. This new view of childhood became apparent in the legal arena when the first juvenile justice system was established in Illinois (1899). Juveniles were not expected to be as

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responsible as adults. Consequently, for similar illegal acts juveniles would not be as culpable as their adult counterparts. The judicial consequences also had to be different. Because of their ongoing growth and development, they were in need of guidance instead of stern retribution. The underlying belief was that children and adolescents guilty of wayward acts could truly be reformed.

A natural outgrowth of this belief was the formation of child guidance clinics, the first of which was established in the Cook County Court System for the purpose of (1) evaluation and (2) guidance and treatment. At the beginning, child psychiatry was intricately interwoven with the forensic issues relevant to judicial needs. The interplay between child psychiatry and the juvenile justice system gave great impetus to the growth and expansion of child psychiatry. The founding premise of the juvenile justice system was that juveniles were incompetent to commit crimes with the same intent as adults because of maturational immaturity in psychologic development. Unfortunately, this nonaccountability for their actions resulted in the euphemisms of reform or training schools. Poorly funded programs run by often poorly trained personnel, receiving delinquent juveniles from a judicial system that often had poorly educated judges, were doomed to inadequacy at best. Although child psychiatry was asked to evaluate the juvenile offender, it was never provided the funding to adequately correct and reform the offender.

Along with this new status, however, came the presumption of incompetency, which led neither to rights nor responsibilities. To all juveniles, this extended the doctrine of parens patriae, coming from early England when the king made decisions for and controlled those who were incapable and incompetent. The juvenile had to await either his 18th or 21st birthday (depending on the state of jurisdiction) to be accorded both his rights and responsibility at once. This situation lasted until the social upheavals of the 1960s and 1970s. Voting ages dropped from 21 to 18 years so that those who were eligible for military draft could participate in directly electing Congress, which would vote on waging wars. A new awareness of the inherent rights of children also emerged with the movement to prevent child abuse by excessive parental discipline. Before 1962 the definition of child abuse was that the child had to die from the alleged abuse. Since 1962, the standard has been increasingly more flexible and realistic, protecting the child from potential lasting harm. The right to growth and development has been proposed and safeguarded. The right to self-determination as opposed to the wishes of the state or parents has been slower to come.

It is easier for the law to deal in artificial milestones, such as age 18 or 21 years, than with the emerging concept of developmental competency, which varies from age to age in a given child and varies from child to child within any given age. These concepts do not easily fit into codification and are even less well understood by legal personnel of varying psychologic sophistication; however, they are real and are increasingly demonstrated in research, just as good

parents have instinctively "known" them for generations. The good parent increasingly gives the developing child greater autonomy within the continuing protective environment of the family home. This begins with choice of color of clothing ("Which shirt would you like to wear?") and proceeds to later, more important choices ("Which high school subjects are you taking?"). Our legal system has been increasingly interested in this problem. A major impetus has come from the need to recognize juveniles as having the ability to accept more responsibility for their criminal acts and from the need to ascribe to them their rights. In the acquisition of rights with the responsibility for self-determination, first men, then women, blacks, and other minorities had to resort to force, including armed rebellion, against the suppressing order. Juveniles appear to be achieving their rights more peacefully, even if more slowly.

From its beginning, the juvenile justice system suffered from the states' failing to fund the system adequately enough to perform its purpose. Adequate programs needed to rehabilitate and psychiatrically treat the juvenile offenders were not instituted. Without the funding to pay sufficient personnel and to build appropriate facilities, the juvenile justice system was able to be only partly successful in achieving its mission for guiding delinquent youth. The field of child psychiatry arose from the courts and could have continued to help this large and needy patient population had society placed its commitment and resources there. However, in the 1960s and 1970s a series of legal challenges to the procedures of the juvenile court system changed its character to one more similar to the adult criminal courts. In the *in re Gault* case,[1] the lack of judicial rigor was so appalling that the United States Supreme Court awarded most constitutional rights regarding trial (specifically the "due process clause" of the Fourteenth Amendment) to any juvenile who faced any charge where placement or incarceration might result from a guilty finding. This was the beginning of a recognition that the teenage offender was in some ways more similar to his adult offender colleagues than he was to younger children. These changes were designed specifically to *protect the juvenile from abuses by society and the state.*

The second major direction of this change in legal understanding came from the juvenile himself. Sadoff[2] discussed the relationship of juvenile violence in society and the subsequent reaction. With the increase in violent juveniles in American urban centers, the state has responded to these acts by seeking to increase the area of responsibility for adolescents. The teenage offenders (and younger) have often stated in judicial hearings, in psychiatric evaluations, and in peer conversations that the current legal standards for juveniles had protected the offender against serious legal repercussions. It was thus possible to commit the grossest of felony without fear of real judicial threat or response. If the convicted violent juvenile was incarcerated, it usually occurred in a typically nondescript warehouse type of residential setting. Furthermore, upon reaching the age of majority, the record of delinquency was erased and cleared. The

state, having formulated the grand idea of the protective, corrective, and nonpunitive juvenile justice system, now was forced to address its gross inadequacies. Juveniles in multiple settings flagrantly taunted police and court officers with the mild sentences that came from the juvenile justice system for even the most serious crimes. Clearly the teenage offenders were demonstrating that they had the capacity for *mens rea.* Moreover, their capacity for avoiding serious punishment by sometimes involving even younger minors in the actual perpetration of the crime was an astounding act of planning. At this point states began to reevaluate the judicial treatment of violent teenagers. Some states now mandate that these offenders be tried automatically in adult criminal courts, whereas other states have a pretrial hearing in juvenile court and waive jurisdiction to the adult court if the alleged crime is of sufficient severity or the offender's past delinquent record is extensive or horrific. These changes were demanded by the public and their elected representatives and were designed to *protect society from violent juveniles.* Both this change and the change regarding judicial rights listed above have added to the growing awareness that teenagers should have more of the rights of our society and increasing responsibility for their actions. These changes are consistent with the growing belief that teenagers have achieved a minimal level of developmental competency. This philosophical approach and trend should encourage much-needed future research to document the parameters of establishing this developmental competency.

In New York State, the Juvenile Offender Law[3] mandates that certain violent acts—Class A Felonies (murder, attempted murder, and rape)—performed by teenagers (specifically 13-, 14-, and 15-year-old adolescents) be tried not in juvenile court but in adult criminal court. It is possible for the adult criminal court to remand the case to Family Court for handling as a Designated Felony,[4] but these specific crimes must *first* be charged in the criminal court. It is clear that New York State believes that the average juvenile of these ages has the capacity for *mens rea* that is expected of older felons. Mental retardation, legal insanity, or other conditions might of course restrict this capacity, just as it would for adult offenders; however, it is a very rare teenager who would not meet the minimal requirements for competency to stand trial in adult criminal court.

The average 12-year-old child has achieved the minimal mental capacity and moral reasoning that is expected of all adults. It terms of Piagetian development,[5,6] the 12-year-old child has achieved concrete operations and can do average adult reasoning. The acquisition of abstract reasoning or Piagetian formal operations occurs only in approximately one third of the population. Clearly, this could not be a minimal standard for adult responsibility. Although less established, Kohlberg's studies[7] with boys and Gilligan's studies[8] with girls support the age of 12 as the time when most children have achieved a morality that recognizes

that society makes rules and regulations for the greater good of all. This same level of moral development is the predominant level in the adult population. This is a point that is lost on most clinicians examining the development of adolescents and is an obvious contribution to legal understanding from applied clinical child psychiatry and forensic psychiatry. Although development may proceed to universal ethics or to extensive abstract reasoning, the overwhelming majority of functioning adults in even a literate society do not achieve these levels. The average adult has concrete operational cognition and conventional morality of society. Because these are adequate for adults, I believe that they should also be acceptable as a standard for juveniles. When juveniles achieve these levels, in my opinion, there should be a presumption of developmental competency. Overriding this presumption should carry the burden of proof and explanation in judicial settings.

Increasingly, this level of competency in teenagers has led to ever greater rights of autonomy in other areas of their life. In many states, teenagers aged 16 years or older can no longer be hospitalized by their parents will and consent alone. Teenagers can increasingly consent to medical care over the objections of their families. In some states, such as New York, they can seek medical evaluation and treatment and maintain strict confidentiality from their parents and guardians. They still remain protected (or restricted) from entering contracts and handling financial affairs. The lack of judgment and "perspective" are often given as reasons for this denial of rights. This is a significant difference between adolescents and adults: years of experience, which produce wisdom. This is another area in which new hard, rigorous research could be of value in aiding both clinical psychiatry and the legal system.

There is great controversy over the rights of juveniles (1) to engage in consensual sexual relations with peers and (2) to obtain and use birth control and contraception. Rodman *et al.*[9] discussed the conflicting forces of values, morals, rights, responsibility, and control of teenage sexual desires, behaviors, and consequences. The desires of parents to protect, control, suppress, or "save" their teenage children from immorality has, in the past, taken precedence over the rights of their children to self-determination, given adequate education and informed choices. Clearly, sexual relations between consenting teenagers who have reached puberty are biologically propelled and species-specific behavior. The need for education and training to meet the requirements of living in a developed technological society makes it disadvantageous for teenagers to become pregnant and have children. This was not necessarily true for an agrarian society. In fact, in many parts of the world, marriage (with its subsequent sexual component) is common for teenagers. Now that pregnancy can be prevented, there may not be any biologic or psychologic reason to necessarily preclude consensual peer sexual relations. Good, rigorous research is

needed to further establish the validity of this emerging impression. Juveniles who have reached puberty have the developmental cognitive competency to exercise their options regarding sexual relations. Society has its obligation to provide education regarding such behavior and its multiple consequences so that teenagers have informed judgment. It is probably inconsistent to hold teenagers responsible for felonies but to deny them the right and responsibilities regarding other aspects of their lives, bodies, and future. This is a philosophical stance that may be more prevalent among child psychiatrists and pediatricians than among other segments of American medicine and society.

Formerly, the restriction of the right to self-determination and the lack of full accountability and responsibility in postpubertal teenagers were ascribed to the belief and theory of need for completion of development. The formerly prevailing theory was that development was complete after adolescence. The recognition of continued stages of development throughout all of adult life, including geriatrics, has aided in the reassessment of this prior belief and expectation. The growing awareness of psychiatry and psychologic science, coupled with the maturation of the legal standards for juveniles and the societal demand that violent juveniles in particular be accountable for their actions, has led to a reassessment of the age of competency.

Gaylin[10] addressed this issue clearly and cogently. His conclusion, however, was essentially that juveniles had more to gain from being protected than from being held accountable. He gave various situations with assessment of both risk and gain, primarily in the medical decision-making process. Gaylin's situational approach, although an ideal, is not functional in the clinical forensic setting where clearer guidelines and presumptions are required. There is no longer any compelling reason to, de facto, deny adolescents all of their rights and responsibilities. Regardless of their decisions, parents who have chosen actively or by default to have children have a responsibility to promote their adolescent's wishes toward self-determination within the financial and emotional capabilities of the family. Perhaps there should be a legal presumption that juveniles who are 14 years old are competent to formulate their own decisions. The choice of age 14 years as a guideline might provide an acceptable margin of two to three years from the expected achievement of this competency, moral and cognitive. Juveniles between the ages of 11 and 14 years of age should be accorded greater latitude in formulating their decisions. No parental decision should be opposed to the wishes of juveniles in this group unless it is necessary to avoid adverse consequences that would be expected to result from the juvenile's choice. One of the factors necessary for informed competency is judgment and wisdom. These factors usually increase with increasing age. Geriatric patients have difficulty with decreasing cognition, creating a reverse developmental competency. For the teenager, the effects of different types of parenting can affect the degree of acquisition of judgment and experience. Further re-

search should be helpful in elucidating the parameters and extent of learning and guidance. The greatest difficulty concerns decisions made by children between the ages of 7 and 11 years.

Before the acquisition of logical thinking, it is proper to give the decision-making power to the appropriate guardian. Even from early recorded Western history, the early Christian church has held children under the age of 7 years nonaccountable for mortal and venal sins. In the Roman Catholic tradition, children at age 7 years begin to receive the sacrament, which provides absolution from sin. It is not necessary before age 7 years because the child is not capable of sinning. The child lacked religious and moral *mens rea.* Again, Piagetian research is helpful in determining the inability to be competent for significant decisions for the preschool child. Tradition and science again coincide.

Weithorn[11] found that children and adolescents had a remarkable capacity for competent decision making. The simple application to children (aged 7–11 years) of competency standards applicable to adults could resolve the issue of competency for any particular given situation. Maudsley,[12] Sadoff,[13] Roth *et al.*,[14] and Appelbaum *et al.*[15,16] have discussed in detail the forensic standards for assessing different competencies in adults with or without mental illnesses. The standards all begin with the presumption of competency, which must then be disproved. In some situations it would be clear that the child does not understand fully the ramifications of the decision and thus might be found incompetent. In others, a different finding might result. As a legal safeguard, the parents (or guardian) should have joint decision-making competency. In the presence of disagreement, the younger school-aged child (7–8 years), because of inexperience, would yield to parental decisions. In the older child (9–11 years), the weight of decisions would be more equal. In theory, parents who permit greater participation by their children in the decisions affecting their lives would produce children with better judgment and rational problem solving. Again, research could be helpful in demonstrating the role of parenting methods. Weithorn[11,17] presents compelling data supporting the ability of nine-year-old children to have sensible rational judgments. Obviously, the continuing standard is that of informed consent, necessitating an adequate data base from which to decide. This standard is in fact already being applied by most child psychiatrists involved in child custody disputes between divorcing or divorced parents. Increasingly more judges adjudicating these disputes are giving greater weight to the child's wishes, with greater attention to the reasons underlying these wishes.

From this comes the reasonable question: Will the state, through the courts, be adjudicating family disputes? There are two major considerations. First, the courts and the state are increasingly involved in family disputes in which violence has occurred or neglect is present. This is true for the welfare of children *and* adults (most notably in marital physical abuse). Second, this above approach to recognizing legally the higher level of individual competency of juve-

niles in general and teenagers in particular would produce a greater awareness in parents and guardians of the need for consultation with, participation by, and consent from the involved juveniles. There would be a movement of American families away from a patriarchal organization to a more democratic and egalitarian form.

The notion that some parents would be forced to finance activities for their juveniles which would be anathema to them is of course a difficult position. It is apparent that juveniles in our society are not in a financial position usually to fund their own decisions. In my opinion, a reasonable approach to resolving this dilemma is to view the relationship between parent and child as essentially contractual. The parent has, through active decision or passive action, permitted a pregnancy to occur, which results in a birth. Philosophically, the parental contract may be seen as an implicit agreement to raise the child to fullest potential within the ability and limitations of the parents. In no way would one expect the child to abrogate his rights to eventual self-determination and fulfillment. In this view, children have greater rights, and parents have greater responsibilities and obligations than traditionally held in the past. An adequate discussion regarding the rights of parents and guardians is beyond the scope of this paper. The issues involved here are philosophical, ethical, and political. I have attempted to apply some psychiatric findings, within historical trends, to a perplexing, complex and difficult social and legal issue. Certainly, parents do have rights in rearing their children. Certainly, children do have rights in being reared by their parents. Children, however, because of their developmental needs, must certainly have greater rights and adequate safeguards. I hope the questions and possible solutions raised in this article will stimulate more research into this field of study.

In summary, after careful review of developmental competency in children, I would recommend:

Age of Juvenile (yrs)	Person Competent to Make Decisions and Bear Responsibility
0–6	Parent
7–8	Parents with child participating
9–11	Parent and child jointly
12–14	Child with parental ratification
14-on	Child

The presumption would be that the juvenile had the competency ascribed above, unless certain circumstances (mental retardation, severe psychosis, medical conditions, etc.) could be demonstrated to impair the expected level of competency. In my opinion, this would bring the continually emerging knowledge of human development into more direct application in the area of political and social rights of the individual.

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