

# Commentary: Building a Developmental-Ecological Model of Criminal Culpability During Adolescence

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In this issue of *The Journal*, Dr. Peter Ash offers the American Academy of Psychiatry and the Law some ideas on developmentally informed assessment of criminal culpability during adolescence. After highlighting issues that complicate the definition and assessment of criminal culpability, Ash lists 10 constructs that he believes should be carefully considered by forensic clinicians in developing opinions about legal responsibility for a crime committed by a minor. I applaud Ash for beginning a dialogue on the clinical dimension of this topic, and I appreciate his emphasis on the need for developmentally informed assessment of juvenile defendants. In this commentary, I briefly illustrate how the principles of developmental psychopathology can be used to articulate a developmental-ecological model of criminal culpability for use by forensic clinicians in the assessment of younger defendants, as the courts more broadly accept the concept of mitigation of legal responsibility by reason of developmental immaturity.

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In this issue of *The Journal*, Dr. Peter Ash<sup>1</sup> offers forensic clinicians some ideas on developmentally informed assessment of criminal culpability during adolescence. After highlighting factors that complicate the definition and assessment of criminal culpability, he lists 10 constructs that he believes should be carefully considered by forensic clinicians developing opinions about the degree to which a defendant should be held legally responsible for a crime committed as a minor. Although both developmental researchers and legal scholars acknowledge the potential need for individualized assessment of criminal culpability in juvenile defendants,<sup>2</sup> much of the existing literature focuses on ways that developmental science argues for excuse or mitigation of legal responsibility for children and adolescents as a special class of criminal defendants.<sup>2–10</sup> In his article, Ash proposes using that same body of literature to define

a developmentally informed approach to the forensic assessment of criminal culpability during adolescence.

When examined from an historical perspective, the concept of mitigated criminal culpability is, as Ash<sup>1</sup> and others<sup>2,6,10</sup> have explained, a core concept in the history of the juvenile justice system. In *Thompson v. Oklahoma*,<sup>11</sup> *Roper v. Simmons*,<sup>12</sup> and *Graham v. Florida*,<sup>13</sup> the U.S. Supreme Court clearly indicated that, in at least some circumstances, developmental immaturity is a mitigating factor that should be considered in the adjudication of crimes committed by a minor.<sup>14</sup> Legal and developmental specialists have summarized developmental research that supports mitigation of legal responsibility,<sup>2–10</sup> but the courts have not yet offered a working definition of the concept to guide clinical assessment of criminal culpability during adolescence. I applaud Ash for beginning a dialogue on the clinical dimension of this important topic, and I appreciate his emphasis on the need for a developmental perspective in the forensic assessment of younger defendants that is clearly supported by current understanding of normative development. In this commentary, I

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would like to expand the discussion by briefly highlighting ways the principles of developmental psychopathology can be used to integrate some of the ideas offered by Ash into a conceptual model of criminal culpability that may eventually be used by forensic clinicians to conduct assessments of legal responsibility that inform the rehabilitation of juvenile offenders.

### **Criminal Culpability as a Developmental Construct**

To evaluate criminal culpability in a teenage defendant, forensic clinicians must have a working definition of the construct. Conceptually, it is not possible for a forensic clinician to evaluate someone for the presence of something unless there is some conceptualization of exactly what the forensic clinician is supposed to look for. Legal commentary on the subject of criminal responsibility during adolescence repeatedly highlights the fact that there are relatively clear working definitions of diminished and mitigated responsibility grounded in statutory and case law to guide clinical assessment of adult defendants.<sup>2</sup> However, even with three relevant rulings by the U.S. Supreme Court,<sup>11-13</sup> there are, as Ash<sup>1</sup> and others<sup>7</sup> have noted, still no clear professional standards to guide the clinical assessment of minors who, from a legal perspective, are inconsistently held more or less responsible for the crimes they commit.

As Ash<sup>1</sup> indicates, the concept of criminal culpability is derived from philosophical ideas about moral responsibility for wrongful acts. However, moral responsibility for human behavior is an elusive concept that has been the focus of extensive philosophical debate. The exact nature of that debate cannot be properly reviewed in this brief commentary, but careful consideration of the philosophical discussion offered by Cartwright<sup>15,16</sup> highlights some interesting ideas for consideration in any effort to create an operational definition of criminal culpability during adolescence.

In his philosophical review of the concept, Cartwright<sup>15,16</sup> argued that moral responsibility is about attributing consequences of actions to individuals, and he proposed that any conceptualization of legal responsibility must be derived from a general understanding of moral responsibility for the consequences of action occurring in the course of ordinary life. Like scholars writing about the concept of legal responsibility,<sup>2,5-7</sup> Cartwright emphasized the idea that

moral responsibility involves assumptions about the presence of certain psychological requisites that tend to vary from person to person. To be held responsible for a specific act, an individual must possess the capacity to do certain things, such as form intentions and carefully evaluate those intentions against both internal and external standards of conduct. Although there is debate about their exact nature,<sup>15,16</sup> these psychological requisites can be conceptualized only as some subset of psychological skills directly relevant to the conceptualization, evaluation, and execution of human behavior. For forensic clinicians to evaluate juvenile defendants for the presence of these psychological requisites, there must, as Ash<sup>1</sup> proposes, be some working definition of what those requisites are.

Like Ash<sup>1</sup> and others,<sup>2</sup> Cartwright<sup>15,16</sup> also acknowledged that there is a developmental dimension to moral responsibility. The psychological capacities that serve as the foundation for personal or social attribution of moral responsibility develop over time, such that there are differences in the presence of these capacities within the same individual as the individual matures. There may also be differences in the presence of these psychological capacities between individuals of different ages and between individuals of the same age. By extension, this means that ideas about holding an individual morally responsible for a specific act must involve some developmentally informed evaluation of this critical subset of psychological capacities. For any social system to hold an individual morally responsible for a specific act, there must be some working knowledge of the way these psychological capacities change over time as an individual matures. For forensic clinicians to evaluate juvenile defendants for the presence of these psychological capacities, they must, as Ash<sup>1</sup> and others<sup>10</sup> have suggested, know, not only what these capacities are, but how they typically change over time as an individual matures.

The psychological requisites underlying moral responsibility can be conceptualized as falling along a continuum such that an individual may demonstrate relatively more or less of a specific requisite, but Cartwright<sup>15,16</sup> argued that moral responsibility must be defined as a dichotomous construct. Contrary to the position taken by others,<sup>17,18</sup> Cartwright proposed that an individual either is or is not responsible for a specific act. Consistent with existing legal doctrine,<sup>2</sup> he argued that someone is either not morally respon-

sible by excuse or morally responsible, with or without note of mitigating circumstances. Interestingly, Pickard<sup>19</sup> argued that an individual might also be morally responsible but not blameworthy.

Debate about whether moral responsibility is a continuous or dichotomous construct may, in some ways, be moot, but the distinction could be important in the development of operational definitions of legal responsibility. Conceptually, saying that someone is or is not morally responsible when judged against a commonly accepted standard differs from saying someone is more or less morally responsible when situated along a commonly accepted continuum somewhere between not responsible and fully responsible. Determining someone is not morally responsible because of developmental immaturity or morally responsible but developmentally immature seems easier than determining how close someone is to being morally responsible. For forensic clinicians to offer the courts an opinion about the legal responsibility of juvenile defendants, they must know what the psychological requisites are to be held legally responsible, they must understand how those requisites change as an individual matures, and they must have a clear definition of legal responsibility as either a dichotomous or continuous construct.

Finally, and perhaps most important, Cartwright<sup>15,16</sup> argued that standards to hold someone morally responsible must be socially determined. Society has to define the guidelines for determining who is and is not morally responsible under specific circumstances. For the purpose of this discussion, it is important to note that he argued that knowing an individual's psychological capacities does not allow for judgment about that individual's degree of moral responsibility. There are no absolute criteria for determining someone is morally responsible for a specific act. Society must decide what the threshold in psychological capacities will be to decide an individual should be held fully responsible from a moral perspective. Where the line is drawn to define that threshold is a social decision.

Once that threshold has been set, it is, according to Cartwright,<sup>15,16</sup> possible to determine whether an individual is morally responsible for a specific act by making judgments about whether an individual's psychological capabilities meet the socially determined criteria. Ironically, this idea actually brings the discussion full circle. Developmentally oriented forensic clinicians may be able to evaluate individuals

for the presence of specific psychological capacities, but they cannot help make socially relevant decisions about whether an individual is or is not responsible without some working definition of legal responsibility predicated on some commonly accepted ideas about moral responsibility.

### **Constructing Developmentally Informed Models of Criminal Culpability**

Building on some of the ideas outlined above, the question becomes whether it is possible to construct a developmentally informed model of legal responsibility for criminal behavior that can be used in the clinical evaluation of minors. Assuming the legal community creates a working definition of criminal culpability, the next task will be to develop a conceptual framework within which to make professional judgements about whether someone meets the developmental criteria to be held legally responsible. Over the course of the past 20 years, developmental scientists have outlined a set of general principles that attempt to account for the exceedingly complex nature of normative and aberrant development as it unfolds over time.<sup>20-22</sup> At this time, these general principles are already being used to define developmental models of juvenile delinquency, integrate the existing literature on the nature of criminal offending during childhood and adolescence, define developmental pathways to criminal behavior during childhood and adolescence, and identify directions for ongoing research.<sup>23-26</sup> Increasingly, these guiding principles are also being used to define developmentally sensitive approaches to the clinical assessment of psychopathology.<sup>27,28</sup> As Ash<sup>1</sup> suggests, the time to begin using them in the definition and assessment of criminal liability seems to have arrived.

Briefly, developmental-ecological models of human behavior based on the principles of developmental psychopathology<sup>20-22</sup> hold that development is a continuous process of biopsychosocial change that begins at conception and ends with death. As a multidimensional construct, development cannot be divorced from the historical context within which it occurs. It also cannot be divorced from its social context. As it unfolds over time, development is cumulative, it is usually characterized by increasing complexity, and it can involve both gains and losses. Contrary to popular assumptions, it is generally not linear in nature.

The principles of developmental psychopathology<sup>20–22</sup> also hold that development can only be understood as a complex process of interaction occurring both within and across living systems. Development of one biological system within an individual affects the development of other biological systems. Development of biological systems affects the development of psychological systems. Development of the individual occurs through interaction with the environment, and the individual is considered an active agent in determining the course of development through interaction with the environment. Over time, there can be both lawful continuity and lawful discontinuity in development.

The principles of developmental psychopathology<sup>20–22</sup> also distinguish between competence and psychopathology. Competence is commonly defined as the capacity to utilize psychological (internal) and environmental (external) resources to successfully negotiate the demands of continued development. There may be universal, age-specific, and culture-specific markers of competence as an individual matures. Psychopathology is commonly defined as the repeated failure, for whatever reason, to negotiate the demands of continued development, typically in a manner that contributes to psychological distress or social difficulty. When examined from this perspective, psychopathology can only be understood as gross deviation from normative development.

Within this framework,<sup>20–22</sup> the concept of developmental pathways to competence and psychopathology is important. So are the concepts of turning points and critical periods. By the principles of developmental psychopathology, there are innumerable pathways toward and away from competence or psychopathology. Individuals who seem to begin from a common point, such as being born to a teenage mother living in rural poverty, can have dramatically different developmental outcomes. Likewise, individuals can come to the same developmental outcome, such as juvenile arrest for a serious assault, via movement along multiple pathways. There can also be turning points during critical periods of development, like initiation into a gang or admission to a specific school during early adolescence, that quickly and decisively turn the course of development toward either more competence or more psychopathology.

The idea of constructing a conceptual model of criminal culpability from a developmental perspec-

tive quickly raises several questions. What psychological requisites must one have to be held responsible for criminal behavior? What is the usual trajectory for the development of these psychological requisites as children move from infancy through childhood into adolescence and then on to early adulthood? Are there developmental milestones that represent critical building blocks in the development of these psychological requisites? What biological, psychological, and social conditions promote their development? What biological, psychological, and social conditions interfere with their development? What circumstances interfere with the use of these psychological requisites once they seem to have been acquired?

Given these questions, the list of critical factors Ash<sup>1</sup> outlines might be reorganized into a developmental-ecological model of criminal culpability during adolescence. It is not possible in this brief commentary to debate what should and should not be included in a developmental model of legal liability. The constructs highlighted by Ash might, nevertheless, be reorganized to represent (a) psychological skills necessary for criminal culpability; (b) biological, psychological, and social conditions that directly promote or impede the development of these psychological skills; (c) behavioral predispositions that may interfere with the use of these psychological skills; and (d) situational influences that may interfere with the use of these psychological skills. The U.S. Supreme Court has accepted the concept of developmental immaturity as a mitigating factor in very specific circumstances,<sup>14</sup> but the courts have not yet clearly outlined the psychological skills an adolescent must have to be considered fully responsible under the law. Ash<sup>1</sup> and others<sup>3,5–8,10,29,30</sup> have, however, proposed that any listing of psychological skills directly relevant to the concept of legal responsibility include (a) an appreciation of the wrongful nature of specific behaviors, (b) a general sense of responsibility, (c) some degree of future orientation, (d) the capacity for perspective-taking, and (e) specific decision-making skills. The capacity for independent judgment in the presence of others and self-control in the face of frustration or temptation may also be important dimensions.<sup>3,6–8,10</sup>

Although there is controversy about how developmental neuroscience is being used in the political debate about criminal culpability during adoles-

cence,<sup>31,32</sup> ongoing research may eventually establish the neurological substrate necessary for the full development of these psychological skills. The specifics of the relationship may not presently be clear, but there is, as Ash<sup>1</sup> and others<sup>10</sup> have argued, no question that at least some of them are dependent on the continued maturation of the brain during adolescence and emerging adulthood. Moreover, ongoing development of cognitive capacity may need to precede the development of some psychological skills directly related to a working definition of criminal culpability.<sup>33</sup> Development of these psychological skills may also be related to personality traits<sup>34</sup> known to change during this developmental period.<sup>35</sup> There is also evidence that supportive family situations, success in school, positive peer relations, and religious affiliation promote the development of at least some of these psychological skills.<sup>36,37</sup>

The absence of critical biopsychosocial influences may also be understood as conditions that directly impede the development of the psychological skills necessary for a teen to be held legally responsible. Intellectual disability and other conditions that limit social learning may be understood as biopsychological conditions that impede the development of these psychological skills. When conceptualized as a specific personality trait,<sup>38</sup> the relative absence of these psychological skills during adolescence may represent a psychological condition that further inhibits their development during the transition to adulthood.<sup>39</sup> As Ash<sup>1</sup> notes, exposure to poverty, distressed family environments, and antisocial peers might be conceptualized as social influences that interfere with the development of these psychological skills. Insensitive school environments that exclude high-risk students may also somehow interfere with the development of these psychological skills in ways that promote delinquent behavior.<sup>40</sup>

Given existing standards for the clinical assessment of mitigated legal responsibility in adults, it may be useful, as this dialogue continues, to distinguish these psychological requisites from biopsychosocial conditions that interfere with the use of those requisites once they have been acquired. Conceptually, it may be important to distinguish a teen who does not have the psychological requisites from a teen who has them, but did not, or could not, use them in a specific situation. Consequently, the biopsychological predisposition to impulsivity, sensation seeking, and aggression that Ash<sup>1</sup> mentions may be

thought of as either developmentally specific conditions or evolving personality traits that may interfere with the use of whatever psychological requisites an adolescent has acquired. Likewise, Ash and others<sup>2,6,7,10</sup> have consistently noted that the presence of peers, particularly antisocial peers, appears to be a critical situational influence that may interfere with the use of these psychological requisites. Substance use and psychiatric disturbance may be other important situational influences.

Finally, neither the list of potentially relevant constructs proposed by Ash<sup>1</sup> nor this conceptual reorganization of his list with a few additions should be considered exhaustive. The point here is to simply illustrate how developmental science can be used to operationalize a legal definition of developmental immaturity and then specify mechanisms of causal influence within a conceptual framework that supports clinical assessment of a juvenile defendant. As legislation and case law further define the concept of mitigation of legal responsibility during adolescence, forensic scholars will, as Ash illustrates, need to take the legal standards and articulate a developmental model of criminal culpability that includes constructs that can be reliably measured, so that forensic clinicians can provide the courts with valid opinions about the developmental status of a minor defendant.

### **Developmental Competence: When Compared With Whom?**

Developmental research that shows adolescents differ from adults clearly and appropriately serves as the foundation on which to build arguments for mitigated legal responsibility. In his address, Ash<sup>1</sup> highlights the relevance of this research in the forensic assessment of juvenile defendants. Clearly, developmental research documenting ways that adolescents differ from adults has implications for the clinical assessment of legal responsibility. As this process continues, forensic clinicians will be expected to offer informed opinions about the extent to which a specific teen has or has not developed the psychological requisites, however they may be conceptualized, to be held legally responsible for a specific crime. Research documenting ways that adolescents differ from adults will undoubtedly prove most relevant when there are questions about transfer of a defendant between juvenile and criminal court and the

sentencing of teens convicted of a crime in criminal court.

There are, however, also relatively robust bodies of literature on the extent to which adolescents with and without involvement in criminal behavior differ from one another and the extent to which adolescents with involvement in criminal behavior differ from one another. As this endeavor continues, this research may also prove important when there are questions about moral and legal responsibility in the adjudication of teens who are seen in juvenile court. For example, demonstrating that the developmental maturity of a specific defendant compares with, or even exceeds, normative expectations for teens the same age may be important in a developmental formulation that emphasizes mitigation of responsibility because the teen acted unexpectedly in response to situational influences involving the presence of peers or the use of alcohol that interfered with his capacity to use certain psychological skills. Similarly, demonstrating that the developmental maturity of a specific defendant does not, in any way, approach normative expectations for teens the same age may be important in a developmental formulation that emphasizes excuse from responsibility because of a developmental disability that precludes the acquisition of certain psychological skills. Moreover, demonstrating that the developmental maturity of a specific defendant does not compare with normative expectations for teens the same age may be important in a developmental formulation that emphasizes the relative absence of social opportunity to develop specific psychological skills and the ways that biopsychological predisposition to reactive aggression is likely to consistently interfere with the capacity to use those skills, even if they were to be acquired.

### **Criminal Culpability During Adolescence and Therapeutic Jurisprudence**

In his essay, Ash<sup>1</sup> briefly comments that criminal culpability is irrelevant to questions of rehabilitation, but then he ends his discussion by expressing hope for a political turn toward more rehabilitation of youthful offenders and commenting on the potential for clinical assessment of legal responsibility to identify social and psychological factors amenable to rehabilitation. When examined from the perspective of therapeutic jurisprudence,<sup>41</sup> one could argue that any comprehensive assessment of legal responsibility should inform the development of an appropriate

program of rehabilitation when adolescents are adjudicated delinquent in juvenile court or found guilty in criminal court. Given that the juvenile justice system is supposed to emphasize rehabilitation or restoration<sup>42</sup> over retribution, developmentally informed assessments of criminal culpability could identify specific targets for strategic intervention that if pursued in a consistent, conscientious manner for a reasonable period of time might actually promote normative development and minimize risk for more criminal behavior.

As Ash<sup>1</sup> suggests, careful assessment of mitigating factors should identify psychological, family, school, and peer influences that are amenable to systemic intervention. For example, clinical assessment of criminal liability in a teenage defendant who has been arrested for assaulting a peer while playing drinking games during a high school graduation party might document the presence of otherwise good psychosocial adjustment in someone whose developmental maturity compares with normative expectations for teens the same age. Clinical assessment under these circumstances might highlight the need for substance use intervention that emphasizes development of general capacity for independent decision-making in the face of peer influence and the development of more specific alcohol-refusal skills in an effort to minimize risk for recurrence of a similar offense. Similarly, clinical assessment of criminal liability in a teenage defendant who has been arrested with a friend for a series of armed robberies involving the use of a knife to threaten his victims might document the presence of developmental immaturity characterized by the presence of callous, unemotional personality traits that have evolved in the context of physical abuse as a child within a stressed family living in an impoverished rural community where the local high school systematically excludes students with behavioral difficulty. Clinical assessment under these circumstances might highlight the need for comprehensive intervention designed to promote change in psychological, family, school, and peer systems over an extended period of time in an effort to promote development that minimizes risk for recurrence of a similar offense.

Finally, no discussion of the extent to which the criminal justice system holds adolescents legally responsible for their behavior can end without comment on the extent to which the public should begin holding legislators, the courts, and professionals re-

sponsible for the decisions that legal systems make about the adjudication of juvenile defendants. To the extent that developmentally informed assessments of criminal culpability can inform rehabilitation or restoration, the courts need to assume responsibility for insuring that, regardless of degree of criminal culpability, the juvenile receives treatment that promotes normative development in an effort to minimize risk for a developmental trajectory characterized by more serious legal difficulty. From a developmental perspective, the criminal justice system needs to insure that programs of rehabilitation or restoration serve as turning points in the lives of juveniles during this critical period of development, when there is already evidence that court-ordered intervention can influence movement away from pathways involving more persistent criminal activity.<sup>43</sup> Although some legal scholars have minimized the need for individualized evaluation of criminal culpability,<sup>2</sup> more extensive use of developmentally informed assessments, particularly for teens accused of more serious crimes, may help insure that legal intervention more appropriately promotes normative development that moves teens along a pathway toward desistance.

## Conclusions

In *Thompson*,<sup>11</sup> *Roper*,<sup>12</sup> and *Graham*,<sup>13</sup> the U. S. Supreme Court ruled that developmental factors must be carefully considered when determining criminal culpability for serious crimes committed by a minor, particularly when determining retribution for those crimes in criminal court. Developmental science clearly helped shape the outcome of those decisions.<sup>14</sup> In his review, Ash<sup>1</sup> raises important questions about ways the same developmental science may be used to inform the clinical assessment of criminal culpability in teenage defendants. As he notes, there are already legal proceedings involving minors in which there is need for comprehensive, developmentally informed clinical assessment of constructs relevant in the determination of legal responsibility. As the criminal and juvenile justice systems more clearly embrace the concept of mitigation of legal responsibility by reason of developmental immaturity, forensic scholars will have to continue this dialogue and further expand the ideas outlined by Ash into standards of practice for the systematic assessment of legal responsibility in juvenile defen-

dants who deserve to have their developmental status carefully considered during criminal proceedings.

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