

Adolescent Risk-Taking as a Justification for Paternalistic Legal Policy

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Abstract

The U.S. Supreme Court recently ruled the death penalty for persons under age 18 at the time of their crime, was unconstitutional. The ruling was justified, in part, by a continuing perception that adolescent risk-taking clearly differentiates juveniles from adults. The Court referred to juveniles having a lack of maturity and an underdeveloped sense of responsibility, resulting in “impetuous and ill-considered actions and decisions.” In earlier decisions the Court said that adolescents are more impulsive and less self-disciplined than adults, and described juveniles as “prone to experiment, risk-taking, and bravado.” This paper examines the nature of risk-taking and how perceptions of juvenile risk-taking have historically been used by the courts to justify an oppressive denial of their personhood and an exemption from punishment proportional to the crime. We examine findings from research on both juvenile and adult risk-taking behaviors. It appears that risk-taking does not end at age 18: it is simply recontextualized to support legally supported policies aimed at maintaining control over youth. We conclude that such policies are both empirically unsound and fundamentally unjust.

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Adolescent Risk-Taking as a Justification for Paternalistic Legal Policy

“To be on the wire is life;
the rest is waiting.”¹

Introduction

One of the authors was recently at the gym working out with his trainer. She was telling him about her 18-year-old younger brother who participates in midget-car races. He asked her how old he was when he began racing. She said, “He started racing go-carts at age six.” He asked her if she thought her brother was a risk-taker, a thrill-seeker, and she responded, “No, he is actually very cautious, although he does seem a bit pumped up right after a race.” Is there something we can learn from a six-year-old go-cart racer who might grow up to be an adult stock car or Formula One racer? Is he a thrill-seeker or a risk-taker? And if he is, because certainly these cars do sometimes flip or crash, should he be negatively distinguished from adults who engage in the same behaviors? This paper will explore what we, as criminologists, know about risk-taking in general and adolescent risk-taking specifically, whether adolescent risk-taking should be causally associated with delinquency as some federal judges appear to believe, and whether the risk behaviors of adolescents are such that they could justify paternalistic social and legal policies constraining their behaviors, both specifically and generally.

On March 1, 2005, the United States Supreme Court handed down its ruling in *Roper v. Simmons*. Christopher Simmons was a 17-year-old who had been convicted of an extremely vicious and brutal murder and given the death penalty. During the closing arguments of the original trial, the defense counsel had reminded the jurors of Simmons’ age and that juveniles that age are prohibited from drinking alcohol, serving on juries, and even seeing certain movies because “the legislatures have wisely decided that

individuals of a certain age aren't responsible enough" (*Roper v. Simmons*, 2005). Part of the defense argument was that Simmons was "very immature," "very impulsive." The Supreme Court eventually ruled that Simmons, and all other adolescents under age 18 were too young to face the death penalty. Part of the justification for this dramatic reversal of the Court's precedent set in 1989 in *Stanford v. Kentucky*, where they held that 16- and 17-year-olds were eligible for the death penalty, was that adolescents are, indeed, too immature, too impulsive, and too likely to take risks that more mature adults would generally be averse to taking.

What the Supreme Court was saying was that children, those under age 18, but even as old as 16 or 17, are not sufficiently able to control their impulses nor to fully understand the consequences of their risky behaviors. Although the Court's majority opinion argued that an evolving standard of justice since the *Stanford* decision has led the state legislatures and broad public opinion to reject the juvenile death penalty, the empirical evidence of such a change was not produced. The heart of the majority's opinion was tied to their characterization of the risk-taking propensities of youths and their inability to discern the negative outcomes of their actions. In arguing that youth itself is a mitigating factor in weighing a juvenile's crime, the Court cited their reasoning in *Johnson v. Texas* (1993), when they stated: "The relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuosity and recklessness that may dominate in younger years can subside." In other words, juveniles are different from adults and the law should hold them to a different standard. Or, as Catherine Lewis (1981: 538) asks, "During

adolescence, are there developmental changes in decision-making skills which justify legal discrimination on the basis of age?”

But are they sufficiently different to deny them their humanity, their personhood, their *right* to be punished when their choices, often reflecting choices not unlike those of adults, result in criminal acts? According to Herbert Morris (1995:87), “The right to be treated as a person is a fundamental human right belonging to *all human beings* by virtue of their being human. It is also a natural, inalienable, and absolute right” (italics added). Morris suggests that our institutions of justice need to respect the choices (albeit bad choices) of *all* offenders, including juvenile, and then hold them responsible for their conduct, not treat or cure them of a “uniquely” adolescent condition (impulsive risk-taking) for which they are not responsible. If Morris is correct, then a juvenile’s crime resulting from a risk-taking activity should not be treated differently by the courts, even if it is a homicide that carries the death penalty. Even Christian apologist C. S. Lewis argues that all persons over the age of “reason” who commit crime deserve punishment. According to Lewis (1970: 292), “to be punished, however severely, because we have deserved it, because we ‘ought to have known better,’ is to be treated as a human person made in God’s image. To exempt a juvenile from punishment by defining him or her as less than fully human denies that youth’s humanity.

The Court’s characterization of adolescents as risk-takers is only one of a group of problematic attributes attached to juveniles. Many of the attributes lead to the view that adolescents are incompetent. For example, the Court has presumed juveniles to be too immature to make adequately informed and competent decisions (*Bellotti v. Baird*, 1979) and that “most children, even in adolescence, are not able to make sound

judgments concerning many decisions, including their need for medical care or treatment (*Parham v. J.R.*, 1979). Critics, however, have questioned the Court's approach. According to William Gardner and his colleagues (1989), legal policy is often grounded on scientific assumptions that either fail to hold up to empirical scrutiny or for which no empirical research exists. They also note that empirical studies that compare adult and adolescent decision-making are scant, and even among the few studies that had been conducted, a fair number report adolescent decision-making and risk assessment to be similar to that of adults (Lewis, 1980; Belter and Grisso, 1984). To put it differently, adolescents may not be all that different from adults, at least in this area of their lives, and if not all that different, then is differential legal treatment so justified? Of course, the assumption so far is that adolescents are all the same. The fact is, they are not. Adolescents vary by intelligence, emotional tendencies, maturity, and experiences among just a host of factors. We might also assume that they differ in tendencies toward risk taking.

The Nature of Risk Taking

Risk taking, stress seeking, thrill seeking, sensation seeking, action seeking, impulsiveness, and looking for kicks all generally refer to behaviors that take people closer to the edge, heighten emotions, raise arousal levels, or require one to use one's skills in an attempt to control the potentially uncontrollable (Johnson et al., 2004; Lopes, 1987; Heimer, 1988; Neihart, 1999; Leith & Baumeister, 1996; Baumrind, 1987; Rolison, 2002; Daly & Wilson, 2001; Bell & Bell, 1993). Risk is variously defined as exposing oneself to the possibility of suffering harm or loss or injury; a danger; a gamble: taking a risk in the hope of a favorable outcome; and as a potential harm that could arise from

some present process or from a future event. Risk involves behavior in the pursuit of less knowable or unknowable outcomes.

Psychological studies have dominated the legal debate about juvenile risk-taking although the assumptions of the perspective, as we shall see, reflect only one of a variety of theoretical approaches that might help to illuminate the issues. Two ideas central to this perspective are those of “egocentrism” and “invulnerability.” David Elkind (1967; 1978) argues that adolescents are very egocentric in how they see themselves relative to others. This sense of being unusually special also produces a sense of being immune to the natural laws that more uniformly apply to others, and thus leads to a view of invulnerability to harm. If adolescents believe they are invulnerable to harm, their choices are not self-perceived to carry real risks, even though such choices would be judged to be risky and dangerous by adults. If adolescents are incapable of understanding the “real” risk of their choices due to their delusions of invulnerability, perhaps they should be denied the opportunities to make choices understood by adults to be hazardous. If they are incapable of viewing themselves as vulnerable, then they are also below the level of maturity required to make important legal and medical decisions. Risk-taking is thus seen as an indicator of cognitive immaturity. However, as Lola Lopes (1987) argues, as people age, they tend to seek greater security and become more risk averse.

Other psychologists, such as Eysenck & Eysenck (1977) have viewed risk-taking as a one-dimensional personality trait similar to impulsiveness. Some people essentially have risk-taking or sensation-seeking personalities; they are prone to engage in risky activities. For example, some people appear to be significantly more prone to gambling than others (Dixon et al., 2000; Dickerson, 1984; Caldwell, 1974). However, Joseph

Johnson and his colleagues (2004) suggest that risk-taking behaviors vary across domains (e.g., investment, gambling, health, recreational, ethical, and social). They found that “domain-specific risk taking in one domain showed very little relationship to risk taking in other domains (Johnson et al., 2004: 161).

Risk-taking has also been linked to emotional distress and self-defeating behavior. Poor or non-optimal choices and taking unwise risks appears more likely among people who are emotionally distraught or exhibiting bad moods. People who are emotionally upset lean toward higher risk choices whether a rational analysis of the situation would indicate it to be either the better or the worse choice (Leith & Baumeister, 1996).

Finally, some psychologists have argued that risk-taking is a characteristic of genuinely secure people. For instance, Maureen Neihart (1999: 289) believes that risk-taking “elevates people to greater psychological maturity.” Learning to take risks is an essential benefit to all children, but especially beneficial to gifted children. If gifted children have not learned to take risks, their potential for “high achievement” and “strong leadership” may be greatly compromised. Neihart suggests that there are several benefits of adolescent risk-taking. These include increasing one’s confidence regarding abilities to meet challenges, developing a sense of control in life, developing personal skills for managing anxieties and fears, providing opportunities for important decision making, and reinforcing and motivating people to develop habits of taking planned risks throughout life (Neihart, 1999: 289).

Contemporary rational choice theories (cf., Clarke and Cornish, 1985; Clarke & Felson, 1993; Felson, 2002) view risk taking as part of a rational calculation in the pursuit of gain. The choice to take a particular risk is predicated on the individual having

determined that the odds of achieving the desired goal are greater than the likelihood of failing, or that the gain that might be obtained is sufficiently great to take the risk, even if the odds of failure are increased. Economists use a similar paradigm when looking at risks involved in retirement investment decisions (Thaler & Shefrin, 1981) as well as the behavior of entrepreneurs. For example, Das and Teng (1997: 71) argue that “risk taking appears to be one of the most distinctive features of entrepreneurial behavior, since creating new ventures is by definition a risky business.” While entrepreneurs may be inherently risk-takers, others, such as Palich and Bagby (1995) argue that entrepreneurs are no more likely to take risks than non-entrepreneurs; they simply understand risky situations more optimistically and are thus more willing to take entrepreneurial efforts where others are averse.

Sociologists, such as Jessie Bernard (1968: 6), suggests that risk or stress-seeking can include

. . . such variegated phenomena as the active and voluntary seeking of danger; the searching for problems resistant to solution; the seeking out of excitement, adventure, challenge; the participation in individual and team sports; social conflict in business, war, and crime; exploration, artistic creativity, achievement, struggle with men and with nature; and personal commitment and learning which demand hard effort.

Bernard goes on to say that rational, irrational and even antirational behaviors have been viewed over the centuries as intrinsic to the nature of being human. She suggests that Nietzsche’s notion of “Dionysianism” as “the natural, the spontaneous, the untrammelled, even the wild” is essentially the same as Max Weber’s (1948) notion of eudaemonism,” characterized as “A Good Thing, an unending struggle, an expression of primal strength, a “lust for life” that cannot be long restrained” (Bernard, 1968: 10). According to

Bernard, outlaws, such as Robin Hood, as well as nobles and knights engaged in *eustress* seeking through robbery, jousting, or the ways of the noble warrior. The Vikings pursued *eudaemonistic* quests by roaming the world and conquering others, while today individuals expend energy through polo, sky-diving, mountain climbing, sports, involvement in the Civil Rights Movement, and the Peace Corps, but also through crime, war, and behaviors that carry the possibilities of interpersonal violence.

Samuel Klausner (1968: 137) reminds us that the equilibrium model popular in sociological theories of the first half of the twentieth century viewed stress-seeking situations as “unwanted deviations from a steady state, the fault of some pernicious environment or tragic circumstance denying to individuals and groups their natural state of tranquility. Stress and stress-seeking were viewed as problematic. For Klausner (1968:138), equilibrium theory became “reified as a model of conscious motivational systems. People are said to strive for a consistent self-image, though it be a bad one.” But Klausner argues that the “equilibrium model is no longer paradigmatic” inasmuch as stress-seeking involves “behavior designed to increase the intensity of emotion or level of activation of the organism. . . . by pitting oneself against an unusually difficult or threatening situation;” the individual aims “to disequilibrate some physiological or psychological processes. (Klausner, 1968:139). Ernest Hemingway, Theodore Roosevelt, and an endless number of entrepreneurs are but a few of the stress-seekers Klausner suggests consciously seek to positively bring disequilibrium into their lives.

In his book, *Interaction Ritual*, Ervin Goffman (1967) characterizes risk-taking as a form of seeking action. *Action*, according to Goffman, involves “activities that are consequential, problematic, and undertaken for what is felt to be their own sake”

(Goffman, 1967: 185). Action is contrasted with “uneventful moments” in people’s lives, moments “that are not consequentially problematic. They often are dull and unexciting (Goffman, 1967: 174). Ultimately, uneventful moments are essentially a question of security. People who do not seek action, who are not participants in action, who, as Karl Wallenda says, are not willing to “live life on the wire,” prefer the security of the known, the unchallenging, the uneventful, and the unrisky (cited in Goffman, 1967: 149). Furthermore, Goffman contends that individuals and groups have “different baselines from which to measure risk and opportunity” (1967: 157-158). Life activities that involve a good deal of risk are likely to lead the individual to weigh lightly a risk activity that another might consider to be forbidding.

However, even the most risk-averse person engages in consequential acts. But according to Goffman, such acts, while consequential, are not problematic, and even when they might be, such as a career decision, the “settlement of these bets will often come after decades” while action “brings chance-taking and resolution into the same heated moment of experience” (Goffman, 1967: 261). It is the “voluntary taking of serious chances” in the moment that allows for the acquisition and maintenance of one’s character. Action is a calculated risk that might bring a loss, but significant gains in character are also present. Goffman suggests that Walter Miller’s characterization of the search for *excitement* in lower-class culture is such a form of action seeking. According to Miller (1958: 11):

The explosive potential of this type of adventuring with sex and aggression, frequently leading to “trouble,” is semi-explicitly sought by the individual. Since there is always a good likelihood that being out on the town will eventuate in fights, etc., the practice involves elements of sought risk and desired danger.

Moreover, as Fred Strodbeck and James F. Short, Jr. (1964: 139) have argued, this type of action-seeking is not well-explained by “the degree of deviance in values or neurotic or irrational tendencies” of participants. In addition, they believe that exposing oneself to risk of serious trouble is not best described as a form of short-run hedonism. Instead, they describe such trouble-seeking as an example of taking an *aleatory risk*, or “an action, which in itself is below the threshold of concern of the larger society” (Strodbeck & Short, 1964: 140), but that results in an outcome severe enough to produce the punishment of the individual by the community. Put another way, relatively less significant actions and decisions can intersect in ways that produce more serious consequences that become noticed and sanctioned by society. For example, a boy’s initial action of joining a neighborhood gang may eventually lead him to take action involving fighting to defend the gang. What appears to outsiders as problematic risk-seeking (the initial joining of a gang) is viewed by the risk-taker and her or his immediate audience as little more than a game played with insignificant rewards and relatively little real risk of loss. However, when the loss does occur it is much greater than anticipated. Risks are taken as persons engage in rational balancing of perceived potential gains and losses in status or material well-being.

Stephen Lyng (1990) believes the more useful concept is to think of risk taking as *edgework*. The concept of edgework, an idea Lyng borrowed from Hunter S. Thompson (1971; 1979), involves voluntary risk-taking where the individual is able to develop an illusory sense of control. According to Lyng (1993: 110), edgework “refers to activities that typically involve the process of negotiating the boundary line between life and death, consciousness and unconsciousness, sanity and insanity, or any other dramatic

experiential expression of the line between order and disorder.” Edgework pushes the individual to attempt to gain and maintain control over situations that verge on chaos, situations that most people would consider absolutely uncontrollable, allowing the actor to engage in high-risk behaviors requiring a negotiation of the boundary between order and chaos (Lyng, 1990: 855, 859).

According to Lyng, examples of edgework would include sky diving, aircraft test pilot, mountain climbing, combat soldering, prostitution, drug use, gambling, scuba diving, rock climbing, auto racing, motorcycle racing, endurance sports, downhill skiing, as well as illicit activities such as criminal and delinquent behavior. Edgework, as illicit action, involves what Jack Katz (1988) calls a seductive appeal of experience itself, or the “lived sensuality” of many criminal behaviors, such as low riding, gang banging, and stickups.

Lyng believes edgework offers somewhat unique alternatives to “normal” institutional life or the sense of powerlessness in the community or larger society. According to Lyng (1993: 127): “While a person may never know for sure if s/he is successfully dealing with the institutional threats of modern life, . . . illicit edgework allows one to measure success in an unambiguous way. Every successful stickup, con game, shoplift, etc., is taken as proof that one possesses the basic survival instinct.” Those who sense a powerlessness, who are marginalized in the larger society, who have been dispossessed, but who are able “to successfully negotiate the edge as a criminal offender time and time again [are able] to experience a feeling of omnipotence and transcendence.”

Juveniles as Risk-Takers

Samuel Putnam and Cynthia Stifter (2005) have been studying the behavior of toddlers ages 6 months through 25 months and have identified “sensation seeking” characteristics among a subset of toddlers. Behavior of babies as young as one year old is predictive of patterns at age two. These toddlers at age one tend to be quicker to reach for objects, to react to new sounds or new high intensity toys, and to be more likely to exhibit more positive, exploratory, and risk-taking behavior at age two. Putnam and Stifter argue that the “sensation seeking” in babies and toddlers roughly corresponds to thrill seeking behavior frequently observed in adults.

Sensation seeking and risk taking in babies and toddlers is very likely to occur without awareness of the nature of the risks and their potential consequences. People usually assume that such awareness comes with age and maturity. But one need not be an adult to be aware of risks and their consequences. Indeed, Catherine Lewis (1981) reports that awareness of risks steadily increases over time for adolescents in grades 7 through 12. With each additional grade level, significant differences in expressions regarding risks and their consequences were observed. For example, in-group discussions, older students are more likely to risks and possible consequences of their decisions.

Diana Baumrind (1987) also sees adolescent risk-taking as a function of a developmental process, but a developmental process occurring within the context of larger historical change. She argues that many actions of youths in the 1970s (e.g., drug use, promiscuous sex, reckless driving, and delinquency) were viewed by adults as reflecting their being more “victims of social forces beyond their control and that their challenge to the established order was justified” (Baumrind, 1987:94). Although the

social-behavioral problems of youth have not declined, society has relabeled such behaviors as risk-taking, “thereby implying that young people are less the victims of a disordered society than the source of problems that they themselves create” (Baumrind, 1987:94). Historical changes in norms regulating adolescent behavior and understandings of risk have changed, according to Baumrind, in part in response to adolescents reaching puberty at an earlier age and to “rapidly changing risk factors in the social environment” (Baumrind, 1987:119). Significant differences have emerged in how adults and adolescents view the costs and benefits of risk-taking by the young. What adults view as dangerous actions, for example sexual behavior or smoking, may be valued by adolescents as acceptable because they are believed to prepare them for assuming adult status.

There is no argument about whether adolescents engage in risk-taking behavior. Rather, the important concerns have to do with whether adolescent risk-taking is significantly qualitatively different from adult risk-taking and with how adults perceive and respond to adolescent risk-taking. As noted earlier, risk-taking in general may have positive functions. Many juvenile risk-taking behaviors reflect normal adolescent development. When adolescents pursue actions providing for “self-transcendent challenges” and “pleasurable excess” but that are also moderated by a sense of care and commitment, important gains such as increased self-confidence, ability to handle stress and the taking of initiative are also produced (Baumrind, 1987: 98).

The idea that adolescents may view the same behaviors as less or more risky than adults may also reflect a more complex differentiation. For example, Furby and Beyth-Marom (1992) believe observed differences may be reflected along five dimensions: (1)

consideration of different options; (2) identification of the possible consequences of a selected option; (3) placing different values on possible consequences; (4) assessment of the likelihood of consequences; and (5) use of different decision rules. In one of the few studies to directly compare adolescents and adults, Ruth Beyth-Marom and her colleagues (1993) report that adolescents and adults tended to regard risk-taking in similar ways; both adults and adolescents viewed risk-taking as producing more negative than positive consequences, although adults generally identified more negative consequences than did adolescents.

Is it possible that there is a unique underlying structure of adolescent risk-taking behavior reflected in both risk behaviors and perceptions of risk involved in those behaviors? Eleonora Gullone and her colleagues (2000) classified adolescent risk behaviors into four categories, including thrill-seeking behaviors, rebellious behaviors, reckless behaviors, and antisocial behaviors. While noting that the first category, thrill-seeking, may be understood to include positive risk-taking to the extent that they are socially acceptable, the other three categories were each viewed as having potential negative consequences. Thrill-seeking behaviors were found to be positively related to thrill-seeking perceptions. That is, “the higher the perceived risk, the more likely it was that the adolescent would engage in the behavior” (Gullone et al., 2000:246). However, the other three categories appeared to have a negative relationship: the less the perceived risks, the more likely the risk-taking behavior.

Adult Risk-Taking

Putnam and Stifter’s (2005) study noted earlier suggests that risk-taking behaviors can be observed among toddlers. This finding appears to lend interesting support to

Gottfredson and Hirschi's (1990) argument that risk-taking tendencies are established at a young age and persist throughout the life-span. Adults are, without doubt, frequent risk takers and their choices of risk-taking behaviors are as varied as are those of adolescents (see for example, Arnett, 1998; Hill et al., 2004; Word & Bowser, 1997; Maisto et al., 2002; Staton et al., 1999; Paschall, 2003; Olsen & Cox, 2001; Lyng, 1993; Heimer, 1998; Fisher & Feldman, 1998; and Caldwell, 1974), with the variability in both type and frequency related to a number of factors, including those which will be discussed below.

Although Gullone and her colleagues (2000) focused on adolescents, the same categories of risk-taking (thrill-seeking behaviors, rebellious behaviors, reckless behaviors, and antisocial behaviors) may be applied to adults. Among other things, adults engage in risk-taking in the areas of sky diving, rock climbing, down-hill skiing, auto racing, and day-trading (thrill-seeking), alcohol consumption, illicit drug use, and fighting (rebellious), extra-marital affairs, unprotected sex, speeding, and drunk driving (reckless), and crime (antisocial) to name only a few. Indeed, in 2004, adults comprised 84 percent of the more than 14 million persons arrested in the United States for criminal behavior (Federal Bureau of Investigation, 2005). Only 16 percent of persons arrested were juveniles, which is well below their portion of the total population (26 percent).

According to the 2004 National Survey on Drug Use and Health (Office of Applied Statistics, 2005) nearly six percent of adults aged 26 or older used an illicit drug during 2004 while 18 percent of 21 to 25 year olds, 13 percent of 26 to 29 year olds, and 10 percent of 30 to 34 year olds used an illicit drug during the month prior to the survey. And while younger drivers are among the most likely to engage in risky driving, those age 65 and over have significantly higher rates of crashes than almost all drivers, except

those under age 25 (National Highway Transportation Safety Administration, 1995; Chu, 1994). Finally, only 13 percent of HIV positive cases in the United States are younger than age 25, while 87 percent are age 25 or older. Moreover, in 2003, the age group 35 to 44 accounted for 35 percent of HIV diagnoses and 41 percent of AIDS diagnoses (Centers for Disease Control and Prevention, 2004). To the extent that society is differentially concerned about adolescent risk-taking behaviors that have potential for serious harms, such as drug use, delinquency, or unprotected sex, from these statistics it appears that adults are perhaps as much or more at risk of serious harms from their own risky behaviors.

The Variability of Risk-taking among Adults

Given the relative absence of research directly comparing risk-taking behaviors of adolescents and adults, it might be useful to consider some of the factors that distinguish risk-taking propensities only among adults. For example, adults who are married and have one or more children are much less likely to engage in risk-taking behavior than are single and childless adults (Arnett, 1998; Lucke, 1998). Better educated adults are less likely to engage in risky unprotected sex than are their less educated counterparts (Laumann et al., 1994). Even religious affiliation affects risk-taking tendencies: unaffiliated and Catholic men are reported to be significantly more likely than their evangelical counterparts to have engaged in extramarital sex and to have unprotected extramarital sex (Hill et al., 2004).

A variety of studies have explored race differences in risk-taking among adults. Sharmila Choudhury (2001) reports that blacks and Hispanics, at *every* income quartile and educational level, are significantly less likely than whites to make higher-risk

investments in the financial markets. Other studies have found that white males perceive risks in a variety of circumstances or issues to be much lower than both white females and nonwhite males and females. For example, James Flynn and his colleagues (1994) report white males perceive environmental health risks to be much smaller than white females and nonwhites. Moreover, Melissa Finucane and her associates (2000) found that white males perceived the likely risks of 25 different environmental health risks ranging from cigarette smoking, drinking alcohol, sun tanning, and using street drugs to blood transfusions, chemical pollution, bacteria in food, nuclear waste, and food irradiation as much lower than white females and nonwhite males and females. According to these researchers, “white males were always less likely to rate a hazard as posing a ‘high risk.’ This was particularly true for handguns, nuclear power plants, second-hand cigarette smoke, multiple sexual partners, and street drugs” (2000:164).

Gender differences among adults have been the focus of a number of studies looking at financial risk-taking and perceptions of such risk-taking. Women are less likely to invest less and have a higher level of risk aversion than males (Jianakoplos & Bernasek, 1998; Olsen & Cox, 2001; Charness & Gneezy, 2004). As noted earlier, women also are more likely to perceive a wide variety of environmental health hazards as having much greater risks than do men (Finucane et al., 2000; Flynn et al., 1994). Martin Daly and Margo Wilson (2001: 8) point out that:

There is substantial evidence that men are more accepting of risk than women are. Men die in accidents at much higher rates than do women, . . . and the difference is even larger for death in aggressive altercations. Men also expose themselves to greater hazards in their recreational activities, in substance abuse, and in less assiduous health monitoring and preventive health care (women visit physicians much more often than their male counterparts).

That men exhibit significantly greater risk-taking than women and that their perceptions of the risks of a wide variety of hazards are significantly lower than that of women, and to a lesser extent whites in comparison to blacks, might present an argument justifying differential social and legal policies based on sex paralleling those differentiating adults and juveniles. Yet, such an argument would clearly be contrary to contemporary understandings of equal treatment.

Conclusions

The central question of this paper has been whether adolescents represent a unique and strange breed of risk-takers who are qualitatively different from adults? We have reported substantial evidence to the contrary. It seems that adults are just as likely, or even more so, to engage in a wide variety of risky behaviors; which range from simple sensation seeking, to actions that carry potentially life altering or fatal consequences. What varies between adolescents and adults is not an *innate predisposition* toward risk, but rather the *nature* of the risky behaviors each age group most frequently engages in. Clearly, behaviors such as high stakes gambling, stock market speculation, white collar criminality, and extramarital affairs are more likely to be adult risks. Drug use, violent crime and unprotected sex are behaviors that characterize both adults and adolescents; while binge drinking, vandalism and reckless driving are more likely to fall within the purview of younger individuals.

All of these behaviors carry potentially catastrophic consequences for the individuals engaging in them regardless of age, yet all are common in our society. Which begs the question: if adolescents and adults *both* engage in risk-taking behaviors, then what are the distinguishing characteristics that justify differences in the social and

legal treatment of these two groups? Moreover, if we are prepared to make the argument that mere differential risk taking is an acceptable criterion to warrant differential treatment, should we not apply the same standard to all social groups? Perhaps we need to create different legal and social standards for males and females based on their general patterns of risk aversion? Or for whites and minorities? Or for married couples, as compared to singles? And if we feel that these types of distinctions are fundamentally unjust, as we suspect most readers will, then we propose that the present legal distinction pertaining to adults and adolescents are equally ambiguous and inappropriate.

Some scientists doing research on brain development and related cognitive theories believe the risk-taking behaviors of adolescents reflect a material reality in which youths think differently than adults and this difference is likely due to the adolescent not being as fully developed as the adult brain (Giedd et al., 1999; Goldberg, 2001; Sowell et al., 2001). For instance, studies using MRI images of brain functioning report differences in frontal lobe activities in terms of cell matter and neural features and these differences are then presumed to be responsible for adolescent's being less able to make responsible decisions and to weigh particular courses of action. According to Daniel Weinberger (2001: A13), director of the Clinical Brain Disorders Laboratory at the National Institutes of Health, mature and developed frontal lobes "allows us to act on the basis of reason. It can preclude an overwhelming tendency for action. . . . The [juvenile] brain does not have the biological machinery to inhibit impulses in the service of long-term planning." Adult brains, on the other hand, are believed to generally provide checks on emotion-driven, impulsive, or irrational behaviors, presumably those that include higher levels of risk-taking. Yet, adults are as likely to be risk-takers as adolescents, at least for a wide

range of actions. To the extent that male adults are more likely to engage in risk-taking than are adult females, do brain scientists then suggest that the frontal lobes of male brains reflect lower level of development than those of female brains?

A call by Amnesty International (2005) to reconsider the legal sanction of *life in prison without parole* for adolescent murderers, in large part based on the research claiming deficient adolescent brain development, is the logical extension of their position in the debate over the juvenile death penalty. Those who argued that juvenile brains are not sufficiently developed (producing the necessary maturity, control of impulses, and avoidance of risk-taking) and should make juveniles, as a category, ineligible for the death penalty now argue the same underdeveloped brain of adolescents should keep them, as a category, from facing the less severe sanction of life in prison without parole. However, arguments claiming adolescent's underdeveloped cognitive abilities, their lack of mental capacity, and their innate biological propensity toward risk-taking behaviors, ignores the very real differences in risk-taking by adults, as well as the substantial gender differences in adult risk-taking.

We do not claim that adolescents do not engage in risky behavior, or that their risk-taking might often lead to very negative consequences. Of course they do. Rather, we contend that risk-taking is *not* unique to the young, and those similar differences, if not greater differences, are found among adults. It is a social fact that risk-taking and perceptions of risk vary across the social fabric (Short, 1984). For example, the elderly fear crime much more than do juveniles, while sexual abuse and assault are “core” fears for females, but not for males. Perceptions about the risks involved in these behaviors affect judgments about those who engage in them. It is wrong to assume there are

identical levels of risk among all subgroups producing identical levels of fear. Adults are typically the judges of what counts as risky behavior, as edgework, or as “living on the wire”; but in theory, why shouldn’t the risky behaviors of adults be judged by the young?

Ultimately, this debate is an argument over power, and the power of adults to regulate and control the behaviors of the young through social and legal policies, as has been well addressed in Regoli and Hewitt’s *theory of differential oppression* (Kingston et al., 2003; Regoli & Hewitt, 2006). According to differential oppression theory, in comparison to parents, teachers, and other adult authority figures, children are relatively powerless and expected to—often required to—submit to the power and authority of adults. When this power is exercised to prevent children from attaining access to valued material and psychological resources, to deny children participation and self-determination, and to impede children from developing a sense of competence and self-efficacy, it becomes *oppression*.

Children are exposed to different levels and types of oppression that vary depending on their age, level of development, and beliefs and perceptions of their parents. While there are many occasions when adults exercise power over children out of sincere concern for the child’s welfare, this theory focuses on the times when the adult’s use of power over children is about the needs and interests of the adult, rather than the child. In fact, much of the oppression children suffer stems from their parent’s inability to meet their needs. This may occur either because adults are uninformed about what the needs of children are at different stages of development, or because they are not capable of responding to those needs. The underlying source of adult oppression is the mistreatment they themselves received as children, and continue to experience as adults.

Therefore, differential oppression theory holds that adults oppress children as part of a chain of coercion and abuse that is transmitted from one generation to another (Colvin, 2002; Miller, 1958).

There is evidence that this phenomenon is growing worse in modern society. Whereas previous generations of adolescents enjoyed a relatively smooth transition from childhood to adulthood; with clearly defined expectations, responsibilities and ceremonies that marked the beginning of adult responsibilities and privileges, this is no longer the case. Côté and Allahaar (1996; 2005) have shown that modern youth face a prolonged period of adolescence in which they are kept in a state of “perpetual quazi-childhood” by their parents and other adults. On the one hand, they are expected to fulfill an idealized vision of young adult behavior (e.g. getting and holding a part time job, maintaining good grades in school, keeping a sharp eye on the future while remaining subservient to the immediate demands of their parents and behaving maturely in their opposite sex relationships); but on the other hand, they are consistently denied the authority to become full participants in the adult world where they might enjoy the pleasures and privileges that accompany adulthood.

So how do children adapt to their oppressive treatment? The theory holds that adaptations vary according to the degree of oppression, developmental stage, and the psychological make up of the individual child; however, one of the most popular responses is the *exercise of illegitimate coercive power*. That is, many adolescents turn to risk-taking as a means of establishing autonomy and control, at least in their own minds. Risk-taking, in the form of rebellious, reckless, or antisocial acts, including delinquency (Gullone, 2000), can immediately and demonstratively make things happen, and provide

the child with a sense of restored potency denied her or him by adults and parents (Lyng, 1993; Matza, 1964). Sexual misbehavior, illicit use of drugs or alcohol, and violations of the criminal law, derive greater symbolic importance for the child to the extent that they demonstrate resistance to adult attempts to exert control over his or her behavior. Thus, far from being the product of an uncontrolled, irrational and underdeveloped mind, the theory of differential oppression suggests that adolescent risk taking is, at least in part, an adaptive, rational, response to adult control.

Where does this leave one in terms of social and legal policy? We question the current legislative and judicial interpretation that portrays adolescent risk-taking as the product of lack of maturity, poorly developed cognitive ability, or an undeveloped brain. We also reject the resulting designation of adolescents as individuals in need of special legal protections, such as exemption from the death penalty, or life in prison without parole. Frankly, this represents too simplistic a solution to a complex problem. Many adolescent risk-takers do “live on the edge” or “up on the wire” but this in and of itself does not justify differential treatment in terms of social and legal policy. Many adult risk takers share these same places with our juveniles, and our theoretical discussion suggests that adult society has played a significant role in pushing adolescents up on to these precarious perches! So, if change needs to take place; it is in the form of social change that reduces the amount of differential oppression, and resulting maladaptive risk taking. Unfortunately, as a society, we appear to be moving in the *opposite direction*! Rather than encouraging youth to assume their rightful positions in adult society, and rather than actively mentoring them through the process of doing so, Western society is keeping generations of young people “on hold” for much longer than their counterparts in

previous eras (Côté and Allahar, 1996; 2005). This will no doubt continue to have an effect on the collective risk propensity of this social group. However, unless we wish to begin defining separate judicial standards for other social groupings based on risk (e.g. men as opposed to women; Whites versus minorities, and married couples as opposed to singles) we suggest that the fairest solution is to simply abandon risk propensity as a criterion for the determination of public policy.

If children are competent, responsible, autonomous persons, then they also must be respected and held responsible for their criminal acts. Defining adolescents as a special category of risk-takers and thus less responsible for their actions instead of allowing them to be punished, is a denial of the child's right to be treated as a person. The social construction of definitions of children as risk-takers, innocent, immature, incompetent, and not fully responsible for choices, provides legal justification for differential punishment or an exemption from punishment altogether. Denying adolescents their humanity and their fundamental human right to be recognized as autonomous human beings is the real and very substantial act of oppression. Applying punishment, even the death penalty, to risk-taking youths, while it may appear to be oppressive on the surface, recognizes their personhood and removes at least one major element of their oppression.

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Note

¹ Quote is attributed to Karl Wallenda, commenting on going back up to the high wire soon after his troupe’s fatal accident in Detroit.