

THE WIDENING MATURITY GAP: TRYING AND PUNISHING JUVENILES AS ADULTS IN AN ERA OF EXTENDED ADOLESCENCE

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I. INTRODUCTION

Cultural shifts and evolving parenting norms have dramatically changed society’s perception and expectations of adolescence and young adulthood. The extent and impact of this shift over just a single generation is startling. Not long ago, minors—even preteens—were expected to learn responsibility with babysitting jobs or newspaper routes, roles now almost entirely assumed by adults. High school graduates were expected to get jobs and support themselves.

But the world has changed, and expectations for what juveniles can or should do to take responsibility for themselves are dramatically reduced. Intensive, highly-protective parenting is now the norm, with parents attempting

to play a larger role in young adults' lives than ever before.¹ Even if children do go to college, as a far greater number do, they tend to remain closely tethered to their parents,² and a large percentage come home to live with their parents after graduation.³ They do not perceive themselves to be fully grown-up yet, and do not expect to be fully responsible for themselves, even into their mid-twenties.⁴ Society's expectations for them do not appear to be much higher.⁵ Indeed, neuroscientists are finding that brain development is not complete before the age of twenty-five, so maybe it is unreasonable to expect a person younger than that age to behave like a responsible adult.⁶

Over the same period, however, the criminal justice system has dramatically expanded the prosecution of juveniles as adults.⁷ Eighteen years is no longer the presumptive threshold after which criminal activity brings adult process and adult punishment.⁸ For serious crimes, it is now routine to try and to punish fifteen, sixteen, and seventeen-year-olds as if they were adults in a criminal justice system that has become highly retributive.⁹ The consequence is that these kids do not get a chance at rehabilitation—the primary focus of juvenile courts—and do not get the opportunity to “mature out” of their antisocial behavior.¹⁰

How can these two trends be reconciled? The two concepts appear to be driven by mutually exclusive world views. And yet, they may share a common root—the perception that the world is a far more dangerous place than it used to be. It leads us to shelter our children from the harsh realities of the world far later into their lives, and at the same time, it causes us to lash out against those who threaten us and our children, including the teen offender.

1. See Gaia Bernstein & Zvi Triger, *Over-Parenting*, 44 U.C. DAVIS L. REV. 1221, 1268, 1270–71 (2011); David Pimentel, *Criminal Child Neglect and the “Free Range Kid”: Is Overprotective Parenting the New Standard of Care?*, 2012 UTAH L. REV. 947, 950 (2012).

2. See Sara Busse, *Do College Students Call Home Too Much?*, CHARLESTON GAZETTE (Aug. 14, 2010), <http://www.wvgazette.com/Life/201008130433?page=1>.

3. See Erica Ho, *Survey: 85% of New College Grads Move Back in with Mom and Dad*, TIME (May 10, 2011), <http://newsfeed.time.com/2011/05/10/survey-85-of-new-college-grads-moving-back-in-with-mom-and-dad/#ixzz2VAHK29M8>. But see Jordan Weissmann, *Here's Exactly How Many College Graduates Live Back at Home*, ATLANTIC (Feb. 26, 2013, 3:07 PM), <http://www.theatlantic.com/business/archive/2013/02/heres-exactly-how-many-college-graduates-live-back-at-home/273529/> (disputing the 85% figure and citing Pew economist Richard Fry that the accurate figure is 45%, but noting that even the lower (45%) figure is 45% higher than it was ten years earlier).

4. See Robin Marantz Henig, *What Is It About 20-Somethings?*, N.Y. TIMES (Aug. 18, 2010), http://www.nytimes.com/2010/08/22/magazine/22Adulthood-t.html?pagewanted=all&_r=0 (referring to how young people today “avoid[] commitments” and “forestall[] the beginning of adult life”).

5. See *id.* (“Cultural expectations might also reinforce the delay. The ‘changing timetable for adulthood’ has, in many ways, become internalized by 20-somethings and their parents alike.”).

6. See *infra* Part III.

7. See *infra* Part IV.A–B.

8. See *infra* Part IV.A–B.

9. See C. Antoinette Clarke, *The Baby and the Bathwater: Adolescent Offending and Punitive Juvenile Justice Reform*, 53 U. KAN. L. REV. 659, 660–61 (2005).

10. See *id.* at 661.

Perhaps most disturbing of all is the suggestion that if people retain both these thoughts in their heads at the same time—(1) my child is still a child and needs protection, and (2) that the teen offender should get harsh punishment, as if he were an adult, because of the threat he poses—it betrays a distinct “us versus them” mindset. To the extent that “us” includes privileged society with kids bound for college, and “them” includes disenfranchised urban youths with little in the way of prospects or future, present juvenile justice policy can only serve to divide our society even more profoundly, both socioeconomically and racially.¹¹

The resolution of this conflict—the dissonance that comes with wanting to treat our teenagers and post-adolescents as children, yet wanting to treat juvenile offenders as adults—lies in reexamining the assumptions that drive these attitudes. There is, in fact, considerable evidence that the world is *not* more dangerous than it used to be, especially for American children.¹² If baseless perceptions and irrational fears are put to rest, juvenile justice can and should regain its focus on reclaiming and rehabilitating wayward kids, rather than binding them over to the highly retributive adult system that will only give up on their potential and lock them away for the bulk of their lives.¹³

There are reasons why the states have a separate system for dealing with juvenile offenders, a system that takes into account the fact that these are just kids who still need to grow up. To the extent that science and society recognize the appropriateness of delaying adulthood for young people, some of that patience needs to spill over into our treatment of juvenile offenders.

II. SOCIETAL SHIFTS—EXTENDING ADOLESCENCE

A. Earlier Generations' View: “You’re On Your Own, Kid!”

1. Getting a Job and Providing for Yourself

In past generations, when most Americans did not go to college, the expectation was that an eighteen-year-old—out of high school—would get a job and support himself, assuming responsibility for himself and even, perhaps, for a family.¹⁴ Preparing for that responsibility, teenagers and even preteens often

11. See PATRICK GRIFFIN, SEAN ADDIE, BENJAMIN ADAMS & KATHY FIRESTONE, U.S. DEP’T OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, JUVENILE OFFENDERS AND VICTIMS: NATIONAL REPORT SERIES BULLETIN—TRYING JUVENILES AS ADULTS: AN ANALYSIS OF STATE TRANSFER LAWS AND REPORTING, (2011), available at <https://www.ncjrs.gov/pdffiles1/ojdp/232434.pdf>.

12. See *infra* Part V.A.

13. See *infra* Part V.B.

14. See *Estimated Median Age at First Marriage by Sex: 1890 to Present*, U.S. CENSUS BUREAU, tbl.MS-2 (Supp. 2003), <http://www.census.gov/population/socdemo/hh-fam/tabMS-2.pdf> (showing that from 1952 to 2003, the median age of first marriage went up from 22.8 to 27.1 for men, and from 20.2 to 25.3 for women).

held jobs babysitting, delivering newspapers, or flipping burgers.¹⁵ Those who went to college usually went away from home and had relatively little contact with their parents.¹⁶ They were adults and were expected to take responsibility for themselves.¹⁷ Anyone who still lived at home, perhaps in his or her parents' basement, suffered from a social stigma.¹⁸

2. *Preparing to Be On Your Own: Learning Work and Responsibility*

The amount and type of work that young people were expected to do during their formative years has changed profoundly over the same period. In an agrarian society, on the family farm, everyone in the family was expected to bear part of the workload.¹⁹ Very young children were capable of milking cows, or at least feeding chickens.²⁰ This was not merely a pedagogical tool designed to teach them responsibility and working skill.²¹ Instead, the success of the farm and the fortunes of the family depended very much on the labor performed by all family members, including the youngest of them.²²

After the Industrial Revolution, child labor came to be viewed differently—as an evil that deprived children of innocence and education.²³ But the tension between teaching children responsibility, on the one hand, and protecting them from exploitation by child labor, on the other, persists. During the 2012 presidential primary campaign, Republican candidate Newt Gingrich specifically advocated teaching kids to work by having them perform janitorial services at their schools, but the mere suggestion raised intense controversy.²⁴

B. *The New Parenting Paradigm: “We’re There for You, Kid!”*

Parents today play a much larger role in the lives of their children, even as those children emerge from adolescence into early adulthood.²⁵ When a student

15. See Robert T. Michael & Nancy Brandon Tuma, *Youth Employment: Does Life Begin at 16?*, 2 J. LAB. ECON. 464, 464–67, 472 (1984).

16. See Katherine Lynk Wartman & Marjorie Savage, *Parental Involvement in Higher Education: Understanding the Relationship Among Students, Parents, and the Institution*, 33 ASHE HIGHER EDUC. REP. 1 (2008).

17. See NEIL HOWE & WILLIAM STRAUSS, *MILLENNIALS RISING: THE NEXT GREAT GENERATION* 176–77 (2000).

18. See Jerry Lembcke, *The Times, They Changed*, CHRON. HIGHER EDUC. (Apr. 25, 2010), <http://chronicle.com/article/The-Times-They-Changed/65192/>.

19. ALLAN KULIKOFF, *THE AGRARIAN ORIGINS OF AMERICAN CAPITALISM* 47–52 (1992).

20. See Harvey J. Locke, *Contemporary American Farm Families*, 10 RURAL SOC. 142, 146 (1945).

21. See *id.* at 148–49.

22. See *id.*

23. See Clark Nardinelli, *Child Labor and the Factory Acts*, 40 J. ECON. HIST. 739, 739–42 (1980).

24. Liz Halloran, *Gingrich’s Proposals on Child Labor Stir Attacks, But Raise Issues*, NPR (Dec. 7, 2011, 10:34 AM), <http://www.npr.org/blogs/itsallpolitics/2011/12/07/143258836/ginrichs-proposal-on-child-labor-stir-attacks-but-raise-real-issues>.

25. Rick Shoup, Robert M. Gonyea & George D. Kuh, *Helicopter Parents: Examining the Impact of Highly Involved Parents on Student Engagement and Educational Outcomes*, Presented at the 49th Annual

is eighteen years old and goes away to college, the parents remain heavily involved in their child's life, playing protective and supportive roles.²⁶ The student is not expected to be an independent and self-reliant adult.²⁷

According to one study, “[c]ollege students communicate with their parents an average of 13.4 times a week.”²⁸ A separate study covering 2006–2011 confirmed the high degree of contact between parents and students, finding that 41% of college kids are in communication with their parents every day, with 20% in touch three or more times per day.²⁹

1. *Clinging Parents*

Parents are not merely confidants and advisors to today's college student—they are also far more likely than previous generations to intervene on behalf of their college student.³⁰ When asked about whether “helicopter parenting” continues into the college years, Arthur Levine, one of the authors of a major study on “today's college student,” responded:

Student affairs officials told us amazing stories. We heard about the mom who called 15 times in a single afternoon, all the way up to the president, when her son had trouble with his wireless connection. One mother called to report that her daughter was caught in an elevator; the daughter never called the elevator service people, whose number was posted in the elevator. Another mother complained that the college, in assigning roommates, should match the parents as well “to make sure the other mother is of the same culture I am so we can support each other.” One student came in for a heart to heart about whether to join a fraternity and, at the end, whipped out his cellphone, and said, “Now tell my mom.” And one mother whose son had a dispute with another student called the college to ask how it would be handled. When told that the dean of students' office would contact the boy to arrange a meeting, the mother responded that her son was too busy to meet with the dean's office, but “she would do so on his behalf.”³¹

Forum of the Association for Institutional Research 3–4 (June 1, 2009), available at <http://cpr.iub.edu/uploads/AIR%202009%20Impact%20of%20Helicopter%20Parents.pdf>.

26. *See id.*

27. *See* Karen Levin Coburn, *Organizing a Ground Crew for Today's Helicopter Parents*, ABOUT CAMPUS, July–Aug. 2006, at 9, 10–11.

28. Reema Khrais, *Phone Home: Tech Draws Parents, College Kids Closer*, NPR (Sept. 25, 2012, 3:25 AM), <http://www.npr.org/2012/09/25/161716306/phone-home-tech-draws-parents-college-kids-closer> (referring to Barbara Hofer, psychology professor at Vermont's Middlebury College and co-author of *The iConnected Parent: Staying Close to Your Kids in College (and Beyond) While Letting Them Grow Up*).

29. Tamar Lewin, *Digital Natives and Their Customs*, N.Y. TIMES, Nov. 2, 2012, http://www.nytimes.com/2012/11/04/education/edlife/arthur-levine-discusses-the-new-generation-of-college-students.html?_r=0. Lewin interviewed Arthur Levine, co-author (with Diane Dean) of *Generation on a Tightrope: A Portrait of Today's College Student*. *Id.*

30. *See id.*

31. *Id.*

Such anecdotes represent an extreme, of course, but the trend is not limited to the few. University administrators predictably complain about the role parents have assumed, and a number of universities have initiated programs to help what one administrator called “the most over-involved generation of all time” learn to let go of their kids.³² Parents who hang on and play this kind of role for their college-aged kids (who are, after all, legal adults) are entirely unapologetic. Indeed, they can be somewhat self-congratulatory about it, as evidenced by a mother-daughter relationship with a college sophomore, profiled in a recent National Public Radio story:

“I’m friends with my daughter on Facebook, I’m friends with most of her friends on Facebook, and she’s friends with most of my friends on Facebook,” Robin Dawson says.

A generation ago, if Robin Dawson wanted to talk with her mother, she waited in line to make a collect call home. Of course, snail mail was an option, too.

[But] Robin Dawson says she can’t imagine a world without constant communication with her daughter.

“I just love her,” she says. “I love having the time with her and—this is going to make me cry—I just love having the time with my kid.”

But she insists she is not a helicopter parent; rather, she’s more like a coach on the sidelines, she says, cheering her daughter on.³³

Even those parents who are willing to start letting go are reluctant to recognize the “adulthood” of their college-age children. In a recent New York Times essay entitled *Struggling to Let Go of My College-Age Daughter*, the mother noted that her daughter, who left for college “a few years ago,” is “well on the road to adulthood.”³⁴ This type of comment betrays a more general attitude: not only that eighteen-year-olds have not reached adulthood, but also that even after a few years of living away from home, when they are in their twenties, their parents still do not perceive them as full adults.³⁵

2. Clinging Young People

The societal shift is not limited to parental actions and attitudes.³⁶ Young people today are less likely than previous generations to cut the apron strings.³⁷

32. Sanette Tanaka, *At Freshman Orientation, Helping Mom and Dad Let Go*, WALL ST. J. (July 24, 2012, 11:56 PM), <http://online.wsj.com/article/SB10000872396390444025204577546922089035282.html> (internal quotation marks omitted).

33. See Khrais, *supra* note 28.

34. Randye Hoder, *Struggling to Let Go of My College-Student Daughter*, N.Y. TIMES (Aug. 1, 2012, 11:34 AM), <http://parenting.blogs.nytimes.com/2012/08/01/struggling-to-let-go-of-my-college-student-daughter/>.

35. See *id.*

36. See Wartman & Savage, *supra* note 16, at 7–8.

A Princeton Review blogger, a few days after posting tips on how to deal with parents who are “overly involved” in the college application process, made the observation that “far more students have the *opposite* problem: their parents aren’t as involved as they’d like in college matters.”³⁸

College students are likely to come back home to visit more frequently than ever, leading one parent-commentator to observe, “[T]his is the season when countless articles are published admonishing helicopter parents to stop hovering so much. But based on what I can tell from [my daughter’s] college schedule—as well as that of her friends at schools across the country—‘helicopter children’ may be more accurate.”³⁹ And after graduation, the student is more likely than ever to return “home” to his or her parents.⁴⁰ In fact, it now appears that more than 50%, and possibly as many as 85%, of college students move back home after graduation.⁴¹ The phenomenon is not limited to kids who go to college; the data shows that twenty-somethings are living with their parents at much higher rates across the board.⁴² Expressions of parental frustration with these “boomerang kids” suggest that it is, indeed, a two-way street, and that the delayed assumption of adult responsibility and self-reliance may be driven by the choices and preferences of the younger generation as much as from their overly involved parents.⁴³

3. *Postponing the Responsibilities of Adulthood*

Sometimes this boomerang effect has been attributed to the economic downturn as graduates burdened with student loans, either unemployed or underemployed, have no option but to “go home” and live with their parents.⁴⁴ But the phenomenon predates the economic downturn. In August 2010, the New York Times ran a story attempting to answer the question, “Why are so

37. *See id.*

38. *Applying to College on Your Own? Be Sure to Get Help*, PRINCETON REV. (Oct. 14, 2012, 5:55 PM), <http://in.princetonreview.com/in/2012/10/applying-to-college-on-your-own-be-sure-to-get-help.html>.

39. Hoder, *supra* note 34.

40. *See* Catherine Rampell, *As New Graduates Return to Nest, Economy Also Feels the Pain*, N.Y. TIMES, Nov. 16, 2011, <http://www.nytimes.com/2011/11/17/business/economy/as-graduates-move-back-home-economy-feels-the-pain.html>.

41. Emanuella Grinberg, *College Grads and Their Families Learn to Live Together*, CNN (June 27, 2012, 4:30 PM), <http://www.cnn.com/2012/06/26/living/college-grads-moving-home/index.html> (“More than half of college graduates move back home, sociologist Katherine Newman wrote in her book, ‘The Accordion Family: Boomerang Kids, Anxious Parents, and the Private Toll of Global Competition,’ based on surveys conducted worldwide.”); *see* Ho, *supra* note 3 (asserting 85% of new college grads move back home). *But see* Weissmann, *supra* note 3 (asserting that 45% is the more accurate figure).

42. Weissmann, *supra* note 3; *see also infra* Appendix (displaying the statistics of how many young adults live with their families).

43. *See, e.g., Boomerang Kids, Get Out of the House!: Readers’ Tips for Parents*, HUFFINGTON POST (Sept. 12, 2012, 6:26 PM), http://www.huffingtonpost.com/2012/09/12/boomerang-kids-get-out-of-the-house_n_1869399.html.

44. *See* Rampell, *supra* note 40.

many people in their twenties taking so long to grow up?”⁴⁵ The author observed:

It’s happening all over, in all sorts of families, not just young people moving back home but also young people taking longer to reach adulthood overall. It’s a development that predates the current economic doldrums, and no one knows yet what the impact will be—on the prospects of the young men and women; on the parents on whom so many of them depend; on society, built on the expectation of an orderly progression in which kids finish school, grow up, start careers, make a family and eventually retire to live on pensions supported by the next crop of kids who finish school, grow up, start careers, make a family and on and on. The traditional cycle seems to have gone off course, as young people remain untethered to romantic partners or to permanent homes, going back to school for lack of better options, traveling, avoiding commitments, competing ferociously for unpaid internships or temporary (and often grueling) Teach for America jobs, forestalling the beginning of adult life.⁴⁶

C. Interpreting and Understanding the Shift

1. The World Is a More Dangerous Place

Part of the reason that parents feel the need to play this role of both protector and supporter of their young adult children may be the perception that the world is a far more difficult and dangerous place than it used to be.⁴⁷ Parental and societal investment in protection, at least in the younger years, has mushroomed over the past thirty years.⁴⁸ What was once considered safe and normal—playing unsupervised outdoors in the park or in the neighborhood—is now considered unacceptably risky.⁴⁹ The ages at which, and the circumstances under which, children are afforded autonomy or are allowed to play without adult supervision are increasingly restricted.⁵⁰

The threat of “stranger danger” seems to dominate parenting decisions these days, and the implications for modern families are significant.⁵¹ Unsupervised play has given way to arranged and supervised “play dates.”⁵² Parents are not permitted to volunteer in schools without criminal background

45. Henig, *supra* note 4.

46. *Id.*

47. See Pimentel, *supra* note 1.

48. *Id.* at 953.

49. *Id.* at 951–52.

50. *Id.*

51. See Bonnie Rochman, *Stranger Danger: Are Parents Too Paranoid About Safety?*, TIME (June 11, 2012), <http://healthland.time.com/2012/06/11/stranger-danger-are-parents-too-paranoid-about-safety/>.

52. See Deborah Skolnik, *The New Playdate Playbook*, CNN (Jan. 27, 2012, 7:33 AM), <http://www.cnn.com/2012/01/27/living/new-playdate-playbook-p>.

checks.⁵³ In many places, children are not even permitted to sit on Santa's lap.⁵⁴ These protective attitudes—taken to minimize the risk not just of stranger abduction, but of other threats to a young person's safety—carry over into adolescence and beyond, as teenagers are increasingly driven to school, rather than left to their own devices to walk, bicycle, or use public transportation,⁵⁵ and as parents continue to hover, even after their kids go away to college.⁵⁶

2. *The Perception that Children Are Not Capable of Fighting Their Own Fights, and Must Be Protected*

Another manifestation of the shift comes with the increased focus on bullying.⁵⁷ Children were once expected to learn to deal with bullies by drawing upon their own resources and, at most, encouraged to “stand up” to bullies.⁵⁸ Now, in contrast, bullying is routinely considered a problem that requires adult intervention.⁵⁹

In the 1960s, Johnny Cash recorded a very popular song entitled “Boy Named Sue,”⁶⁰ recounting the tale of a boy who grew up without a father and whose feminine name subjected him to abuse for his entire life.⁶¹ Finally, the boy finds his father, intent on revenge for having saddled him with a name that brought him so much grief and forced him into so many fights over the course of a hard life.⁶² The absentee father explains why he named his son “Sue”:

And he said: “Son, this world is rough
 And if a man's gonna make it, he's gotta be tough
 And I knew I wouldn't be there to help ya along.
 So I give ya that name and I said goodbye
 I knew you'd have to get tough or die

53. Tamar Lewin, *Want to Volunteer in Schools? Be Ready for a Security Check*, N.Y. TIMES (Mar. 11, 2004), <http://www.nytimes.com/2004/03/11/us/want-to-volunteer-in-schools-be-ready-for-a-security-check.html?pagewanted=all&src=pm>.

54. See *Kids Banned from Sitting on Santa's Lap*, PARENTING: SHOW & TELL BLOG (Nov. 28, 2011), <http://www.parenting.com/blogs/show-and-tell/lauren-parentingcom/kids-banned-sitting-santas-lap>.

55. See Noreen C. McDonald & Annette E. Aalborg, *Why Parents Drive Children to School: Implications for Safe Routes to School Programs*, 75 J. AM. PLANNING ASS'N 331, 331 (2009).

56. See *supra* Part II.B.1.

57. See generally Janis R. Bullock, *Bullying Among Children*, 78 CHILDHOOD EDUC. 130 (2002) (stating that children are protected and not bullied).

58. See Signe Whitson, *7 Skills For Teaching Your Child To Stand-Up to Bullies*, PSYCHOL. TODAY: PASSIVE AGGRESSIVE DIARIES (Oct. 19, 2011), <http://www.psychologytoday.com/blog/passive-aggressive-diaries/201110/7-skills-teaching-your-child-stand-bullies>.

59. *What You Can Do: Parents*, STOPBULLYING.GOV, <http://www.stopbullying.gov/what-you-can-do/parents/index.html> (last visited Oct. 9, 2013).

60. See *Johnny Cash Lyrics: “A Boy Named Sue”*, AZLYRICS, <http://www.azlyrics.com/lyrics/johnnycash/aboynamedsue.html> (last visited Oct. 9, 2013).

61. *Id.*

62. *Id.*

And it's the name that helped to make you strong."⁶³

The song depicts, in hyperbolic fashion, a bygone ethic in parenting: the principle that kids learn best from the school of hard knocks.⁶⁴ While the song may have resonated with American audiences in an earlier time, it remains decidedly out of step with current cultural norms. The trend over the last generation has been decidedly in favor of the protection of children, and at far later ages than in the past.⁶⁵

The insistence on protection and supervision for children of ever-increasing ages likely fosters, or at least accommodates, a sense of dependency as children grow up.⁶⁶ Regardless of whether they are capable of greater independence, or whether they would develop better self-sufficiency if given a longer leash, these lower expectations send a strong message to young people that they can expect to be looked after.⁶⁷

3. *Smaller Families*

Another reason parents cling to their kids may be that they have so few of them.⁶⁸ The American birth rate fell to an all-time low in 2011, to a rate

63. *Id.* The lyrics continue:

He said: "Now you just fought one hell of a fight
And I know you hate me, and you got the right
To kill me now, and I wouldn't blame you if you do.
But ya ought to thank me, before I die,
For the gravel in ya guts and the spit in ya eye
Cause I'm the son-of-a-bitch that named you 'Sue.'"
I got all choked up and I threw down my gun
And I called him my pa, and he called me his son,
And I came away with a different point of view.
And I think about him, now and then,
Every time I try and every time I win,
And if I ever have a son, I think I'm gonna name him
Bill or George! Anything but Sue! I still hate that name!

Id.

64. *See id.*

65. *See supra* Part II.C.1.

66. Denise Schipani, *We're Teaching Our Kids to Be Dependent*, N.Y. TIMES (July 14, 2012), <http://www.nytimes.com/roomfordebate/2012/07/14/when-parents-hover-and-kids-dont-grow-up/helicopter-parenting-teaches-kids-to-be-dependent>.

67. *See* Philip A. Cowan & Carolyn Pape Cowan, *Healthy Ideas, Now Twisted*, N.Y. TIMES (July 14, 2012), <http://www.nytimes.com/roomfordebate/2012/07/14/when-parents-hover-and-kids-dont-grow-up/helicopter-parenting-is-not-attachment-parenting>.

68. Gretchen Livingston & D'Vera Cohn, *U.S. Birth Rate Falls To a Record Low; Decline Is Greatest Among Immigrants*, PEW RES.: SOC. & DEMOGRAPHIC TRENDS (Nov. 29, 2012), <http://www.pewsocialtrends.org/2012/11/29/u-s-birth-rate-falls-to-a-record-low-decline-is-greatest-among-immigrants/>.

roughly half of what it was in 1957.⁶⁹ And with the average age of marriage and parenthood going up, no grandkids will come anytime soon.⁷⁰

In previous generations, when families were larger, parents may have been more willing to let go of their older children.⁷¹ After all, in many cases they had younger children demanding far more parental attention and involvement. It seems difficult to imagine a mother like Robin Dawson hovering over her college student the way she currently does if she had three younger children still at home, clamoring for her attention.⁷²

Psychologists have also attempted to explain the modern tendency toward overprotective parenting in terms of family size.⁷³ “Some note that more parents are having just one child, and therefore a larger proportion of parents are ‘new’ parents who are more anxious than those who are more experienced. In a similar vein, it is argued that as parents have fewer children, each child becomes ever more precious.”⁷⁴ Carl Honoré articulates this latter argument succinctly: “The fewer kids you have, the more precious they become and the more risk-averse you get.”⁷⁵

4. *No Need to Grow Up So Fast*

Economic trends may also contribute to the shift.⁷⁶ Standards of living have increased so much that parents *can* help their children more, and longer, than was possible in the past.⁷⁷ Parents are now often subsidizing not only their children’s post-secondary educations, but also “gap years,” and post-graduation experiences, including internships, travel, and other types of self-actualizing exploration.⁷⁸ As a result, these emerging adults remain in a dependent relationship with their parents well into their twenties.⁷⁹

69. *Id.*

70. See Eleanor Barkhorn, *Getting Married Later Is Great For College-Educated Women*, ATLANTIC (Mar. 15, 2013, 7:05 AM), <http://www.theatlantic.com/sexes/archive/2013/03/getting-married-later-is-great-for-college-educated-women/274040/>.

71. See Mark Mather, *Fact Sheet: The Decline in U.S. Fertility*, POPULATION REFERENCE BUREAU (July 2012), <http://www.prb.org/Publications/Datasheets/2012/world-population-data-sheet/fact-sheet-us-population.aspx>.

72. See *supra* note 33 and accompanying text.

73. See MARGARET K. NELSON, PARENTING OUT OF CONTROL: ANXIOUS PARENTS IN UNCERTAIN TIMES 17 (2010).

74. *Id.* (footnotes omitted).

75. CARL HONORÉ, UNDER PRESSURE: RESCUING OUR CHILDREN FROM THE CULTURE OF HYPER-PARENTING 243 (2009) (quoting David Andereg, author of WORRIED ALL THE TIME: REDISCOVERING THE JOY OF PARENTHOOD IN AN AGE OF ANXIETY) (internal quotation marks omitted).

76. See Rampell, *supra* note 40.

77. See *id.*

78. See *id.*

79. See *id.*

III. WHAT SCIENCE TELLS US ABOUT BRAIN DEVELOPMENT AND MATURITY

At the same time, neuroscience confirms that adulthood may be coming later in life than previously imagined.⁸⁰ In 1904, adolescence was first recognized as a legitimate stage of human psychological development.⁸¹ Today, Jeffrey Arnett argues that we should recognize a new, post-adolescent stage, called “emerging adulthood,” reflecting a range of characteristics that describe those between the ages of eighteen and twenty-five: “identity exploration, instability, self-focus, feeling in-between and a rather poetic characteristic he calls ‘a sense of possibilities.’”⁸² All of these characteristics distinguish this demographic from the rest of the adult population.⁸³

Additional studies confirm Arnett’s conclusions. A number of these are summarized and cited in Elizabeth Scott and Laurence Steinberg’s 2008 book, *Rethinking Juvenile Justice*:

Scientists have found clear evidence that the brain continues to mature through adolescence and *into the early twenties*, with large-scale structural change taking place during this period in the frontal lobes, most importantly within the prefrontal cortex, and in the connections between the prefrontal cortex and other brain regions. The prefrontal cortex is central to what psychologists call ‘executive functions,’ advanced thinking processes that are employed in planning ahead and controlling impulses, and in weighing the costs and benefits of decisions before acting.⁸⁴

The findings of this study support the societal trend of treating eighteen to twenty-five-year-olds as if they are not yet ready to act as adults.⁸⁵ Some of these findings are more fully explained by a particular study at the National Institutes of Mental Health, under the direction of Dr. Jay Giedd:

N.I.M.H. scientists . . . found a time lag between the growth of the limbic system, where emotions originate, and of the prefrontal cortex, which manages those emotions. The limbic system explodes during puberty, but the prefrontal cortex keeps maturing for another 10 years. Giedd said it is logical to suppose—and for now, neuroscientists have to make a lot of logical

80. See Henig, *supra* note 4.

81. *Id.* (“Hall attributed the new stage to social changes at the turn of the 20th century. Child-labor laws kept children under 16 out of the work force, and universal education laws kept them in secondary school, thus prolonging the period of dependence—a dependence that allowed them to address psychological tasks they might have ignored when they took on adult roles straight out of childhood.” (citing Jeffrey Arnett)).

82. *Id.*

83. *Id.*

84. ELIZABETH S. SCOTT & LAURENCE STEINBERG, *RETHINKING JUVENILE JUSTICE* 44 (2008) (emphasis added) (footnotes omitted).

85. See *id.*

suppositions—that when the limbic system is fully active but the cortex is still being built, emotions might outweigh rationality.⁸⁶

Neuroscience tells us that we should expect some irrational, emotion-driven behavior from emerging adults, those aged eighteen to twenty-five, and that it is not until their late twenties that it is reasonable to expect them to have the brain development necessary to behave like fully rational adults.⁸⁷ Indeed, it is likely that many adults can look back at their own youthful indiscretions and lapses of judgment and find that some of their foolish behaviors extended well past their eighteenth birthday and into their mid-twenties.⁸⁸

There appears to be little research on whether brain development can be rushed—whether young people, if forced by circumstances to assume responsibility at early ages, can develop their pre-frontal cortex earlier. If so, then the lack of a sense of responsibility and self-sufficiency among emerging adults may be the result of, rather than the justification for, the reciprocal clinging between modern parents and their twenty-something children.⁸⁹ Earlier generations may have grown up faster simply “because they had to.”⁹⁰

Regardless of whether the new findings on brain development reflect a change from earlier generations, and regardless of whether they are the cause or the effect of shifts in parenting norms, the fact remains that young people between the ages of eighteen and twenty-five do not have fully-developed capacity to control impulses and make rational choices.⁹¹ And that alone has serious implications for how they should be treated by the criminal justice system.⁹²

IV. SOCIETAL SHIFTS—TRYING AND PUNISHING JUVENILES AS ADULTS

What constitutes adulthood is important in a wide range of legal and commercial contexts, and society’s various standards betray a startling ambivalence on the issue. We allow sixteen-year-olds to drive,⁹³ but car rental companies typically do not trust their cars to anyone under twenty-five.⁹⁴ We allow eighteen-year-olds to vote⁹⁵ and to serve in the military, but they cannot

86. Henig, *supra* note 4.

87. *Id.*

88. *Id.*

89. *See supra* Part II.B.

90. *See supra* Part II.A.

91. *See supra* notes 81–88 and accompanying text.

92. *See infra* Part IV.

93. *E.g.*, OHIO REV. CODE ANN. § 4507.05 (West 2008 & Supp. 2012).

94. Molly Feltner, *Renting a Car Under 25 Is Possible But Pricey*, SMARTER TRAVEL (June 27, 2006), <http://www.smartertravel.com/travel-advice/renting-a-car-under-age-25-is-possible-but-pricey.html?id=1262493> (“Youth can be a paradox: If you’re age 18 or older you’re considered mature enough to be able to vote, pay taxes, and even go to war. But, until recently, if you were under 25, many rental car companies wouldn’t trust you to drive their vehicles.”).

95. U.S. CONST. amend. XXVI.

be trusted with alcohol until they are twenty-one.⁹⁶ Airlines have their own standards on how old one must be to travel “unaccompanied,” some allowing twelve-year-olds to fly alone, but allowing even younger travelers if they are accompanied by a sixteen-year-old.⁹⁷ Some states will keep children in foster care until age twenty-one.⁹⁸ The IRS allows a “child” to be claimed as a dependent until age twenty-four *if he or she is a student*,⁹⁹ but the Affordable Care Act allows them to stay on a parent’s health plan, even if they are not students, until they are twenty-six.¹⁰⁰

The variety of thresholds suggests that society does not recognize a discrete demarcation between child and adult, but that a late adolescent or post-adolescent may be responsible enough for some things, but not for others.¹⁰¹ At the same time, as noted above, we see a shift toward expecting less of young adults because their adulthood may still be “emerging” until they are in their mid-twenties, so they cannot be trusted with big decisions or responsibilities until age twenty-five.¹⁰² When the scientific evidence came in to support this view, Jay Giedd observed, “The only people who got this right were the car-rental companies.”¹⁰³

So what does this mean for criminal justice? The implications are that, with this new recognition, twenty-somethings are not fully responsible adults, so there are compelling reasons to treat them differently in the criminal justice system. If they lack impulse control, then they are far more likely to commit crimes, of course, and if they cannot weigh costs and benefits, the threat of severe punishment is unlikely to deter them from criminal activity.

96. There is certainly no international consensus on this, either. Americans let sixteen-year-olds drive, but not drink, and the Dutch let their sixteen-year-olds to drink, but not drive. *Alcohol and Drugs*, GOV’T NETHERLANDS, <http://www.government.nl/issues/alcohol-and-drugs/alcohol> (last visited Oct. 9, 2013); *Obtaining a Driving License*, ACCESS, <http://www.access-nl.org/living-in-the-netherlands/getting-around/obtaining-a-driving-licence.aspx> (last visited Oct. 13, 2013). The author’s children attended a Dutch high school, where beer was served at all school dances.

97. See, e.g., *Reservations for Unaccompanied Minors*, AA.COM, <http://www.aa.com/i18n/disclaimers/childrenTravelingAloneChecklist.jsp> (last visited Oct. 9, 2013); *Unaccompanied Minors*, SOUTHWEST.COM, <http://www.southwest.com/html/customerservice/family/unaccompanied-minors-pol.html> (last visited Oct. 9, 2013).

98. See generally Clark M. Peters et al., *Extending Foster Care to Age 21: Weighing the Costs to Government Against the Benefits to Youth*, CHAPIN HALL ISSUE BRIEF (2009), http://www.chapinhall.org/sites/default/files/publications/Issue_Brief%2006_23_09.pdf (discussing the costs and benefits to certain states, such as Illinois, that extend foster care to age twenty-one, as opposed to those states that do not).

99. I.R.S. PUB. 17, CH. 3 (2012), available at http://www.irs.gov/publications/p17/ch03.html#en_US_2012_publink1000170876 (Personal Exemptions and Dependents).

100. *Young Adults and the Affordable Care Act: Protecting Young Adults and Eliminating Burdens on Businesses and Families*, U.S. DEP’T LABOR, <http://www.dol.gov/ebsa/faqs/faq-dependent-coverage.html> (last visited Oct. 10, 2013).

101. See *supra* notes 93–100 and accompanying text.

102. See *supra* notes 94–100 and accompanying text.

103. Henig, *supra* note 4 (“[A] longitudinal study of brain development sponsored by the National Institute of Mental Health, . . . started following nearly 5,000 children at ages 3 to 16 (the average age at enrollment was about 10). The scientists found the children’s brains were not fully mature until at least 25.”).

At the same time, the anti-social activity of young people, which is influenced by these developmental shortfalls, does not mean that they cannot or will not become law-abiding citizens as they achieve full maturity. To the contrary, if a young person's conduct is a product of incomplete brain development and he will "mature out" of such behavior anyway, harsh criminal punishment is neither helpful in terms of utilitarian theories of punishment, nor warranted in terms of moral responsibility.

A. Putting Kids in the Adult Criminal Justice System Is a New Phenomenon

In the 1980s and 1990s, there was an explosion of legislation across the country that expanded the laws, in almost every state, that allow juveniles to be tried as adults.¹⁰⁴ In the preceding decades, juvenile criminal justice was largely focused on rehabilitation.¹⁰⁵ But in the late twentieth century, as violent youth crime rates increased and concerns about gang activity among the young fostered fear, much of the public came to believe that lenient treatment of young offenders was part of the problem.¹⁰⁶

B. Who Gets Tried as an Adult?

State systems are all over the map as to which kids get routed into the adult criminal justice system.¹⁰⁷ The decision is sometimes made by the court, and sometimes by the prosecutor, but the presumptions and the burdens to justify transfer in either direction could not be more diverse.¹⁰⁸ Regardless of the procedural mechanism, the kids who end up being tried as adults are overwhelmingly male persons of color.¹⁰⁹ The Bureau of Justice Statistics found that 80% of juvenile defendants facing felony prosecutions in the adult court system were non-white,¹¹⁰ and that 96% of juveniles in the regular court system were male.¹¹¹

104. GRIFFIN ET AL., *supra* note 11.

105. SCOTT & STEINBERG, *supra* note 84, at 87.

106. *Id.* at 94–95.

107. *See infra* notes 112–26 and accompanying text.

108. *See infra* notes 112–26 and accompanying text.

109. *See infra* notes 110–11 and accompanying text.

110. *Juvenile Defendants*, BUREAU OF JUST. STAT., <http://www.bjs.gov/index.cfm?ty=tp&tid=236> (last visited May 24, 2013).

111. Carol J. DeFrances & Kevin J. Strom, *Juveniles Prosecuted in State Criminal Courts*, BUREAU OF JUST. STAT. 5 (Mar. 1997), <http://www.bjs.gov/content/pub/pdf/JPSCC.PDF>.

1. Procedural Mechanisms

a. *A Sampling of the Procedures Illustrating the Different States' Varied Approaches*

i. *Presumption of Juvenile Court Jurisdiction—Prosecutors Can Seek Waiver*

Judicial waiver laws allow a judge to make the decision, after a hearing, whether to waive juvenile court jurisdiction and to have the case tried in an adult court.¹¹² Most of these statutes leave discretion in the hands of the judge, although they do prescribe standards to be applied in making that determination, and may even create presumptions in certain types of cases.¹¹³ Ninety percent of states have some category of cases in which the court may consider waiver of juvenile jurisdiction, usually upon the motion of the prosecutor.¹¹⁴

2. *Prosecutorial Discretion and Concurrent Jurisdiction*

In other states, there is concurrent jurisdiction, so the prosecutor has the discretion over where to file the case.¹¹⁵ No hearing is prescribed, and there may not be any standards articulated to guide the prosecutor's decision.¹¹⁶

3. *Statute Prescription—Serious Crimes Must Be in Adult System*

Some states have a system of “statutory exclusion,” which provides mandatory jurisdiction in the adult system for certain serious crimes committed by juveniles over a certain age.¹¹⁷

4. *Exceptions and Overlays*

While every state employs at least one of the three approaches described above, many states go further in drawing jurisdictional lines by adding special provisions or exceptions to supplement the basic procedure.¹¹⁸

112. GRIFFIN ET AL., *supra* note 11, at 2.

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

5. *Reverse Waiver—Defense Can Seek Transfer to Juvenile Court*

Whether the prosecutor has exercised discretion to bring the case in the adult system, or whether the statute prescribes it, some states allow the juvenile to raise the question of jurisdiction for the court's consideration.¹¹⁹ In these states, the court is empowered to transfer the case to juvenile court if the court finds it to be the more appropriate venue for trying and sentencing the juvenile in that particular case.¹²⁰

6. *“Once an Adult, Always an Adult” Laws*

In some states where discretion might otherwise exist as to whether to treat a juvenile offender as an adult, such discretion may be extinguished in subsequent cases if the particular offender has previously been prosecuted as an adult.¹²¹ This rule creates some unusual outcomes.¹²² Generally, a misdemeanor or other minor offense will stay in juvenile court; there is no compelling reason to waive juvenile jurisdiction unless the crime is especially serious or violent.¹²³ But under a “once an adult, always an adult” rule, even a petty offense will automatically bring a juvenile back into the adult system if the minor has been there before.¹²⁴ In this way, common youthful indiscretions—e.g., vandalism, malicious mischief, public intoxication—can bring serious adult punishments.¹²⁵

7. *Blended Sentencing Laws*

Some states have statutes that allow juvenile courts to consider criminal sentencing options from adult systems or allow adult systems to consider juvenile sentencing options when disposing of criminal cases involving juvenile offenders.¹²⁶

8. *Standards to Apply*

Wherever the line is drawn in determining whether to try a juvenile as an adult, it will be based on one or both of two key factors: (1) the nature of the

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*

123. *See id.* at 7.

124. *See id.*

125. *Id.* at 2.

126. *Id.*

crime, usually focusing on its seriousness, and (2) the nature of the offender, focusing on either his maturity level or his potential for rehabilitation.¹²⁷

9. *Maturity of the Juvenile and Potential for Rehabilitation*

Taking the second factor first, it is easy to see why this factor should drive the decision. The entire reason we treat juveniles differently from adults is that we believe they lack maturity and, therefore, that they lack the degree of moral culpability that would otherwise attach to their crime.¹²⁸ Their potential to “mature out” of any criminal inclinations makes them prime candidates for rehabilitation.¹²⁹ At the same time, it is ridiculous to suggest that chronological age is a precise, or even reliable, measure of such maturity and moral responsibility.¹³⁰ Ask parents if a fourteen-year-old is old enough to babysit, and they will ask, “Which fourteen-year-old?” Surely some are sufficiently responsible and others are not; the babysitter’s age may be relevant, but it certainly is not determinative.¹³¹ Thus, while it seems obvious that the young and the less mature, in general, should be treated with some measure of leniency, age alone is not a foolproof yardstick to apply in all cases.¹³² In her dissenting opinion in *Roper v. Simmons*, Justice O’Connor made this point forcefully:

Adolescents *as a class* are undoubtedly less mature, and therefore less culpable for their misconduct, than adults. But the Court has adduced no evidence impeaching the seemingly reasonable conclusion reached by many state legislatures: that at least *some* 17-year-old murderers are sufficiently mature to deserve the death penalty in an appropriate case.¹³³

The liberalization of transfer laws in the last twenty years seems to reflect this logic; the fact that someone is a juvenile is not itself a sufficient basis for granting the leniency afforded by the juvenile criminal justice system.¹³⁴ Some crimes and some offenders warrant the harsher treatment of the adult system.¹³⁵ *Roper v. Simmons* is also an excellent example of how the perceived leniency of the juvenile system may fail to deter crime adequately.¹³⁶ According to trial testimony, Simmons, then a seventeen-year-old high school junior, “assured”

127. See, e.g., ALA. CODE § 12-15-203(d) (2013), *validity called into doubt* by *Graham v. Florida*, 560 U.S. 48 (2010); 42 PA. CONST. STAT. ANN. § 6355(a)(4)(iii) (2013), *validity called into doubt* by *Graham*, 560 U.S. 48; TEX. FAM. CODE ANN. § 54.02(f) (West 2008 & Supp. 2012).

128. See SCOTT & STEINBERG, *supra* note 84, at 118.

129. *Id.* at 87.

130. See *Roper v. Simmons*, 543 U.S. 551, 620–21 (2005).

131. See *id.*

132. See *id.* at 597–99 (O’Connor, J., dissenting).

133. *Id.* at 588 (emphasis in original).

134. See generally GRIFFIN ET AL., *supra* note 11 (analyzing state transfer laws and reporting).

135. See *id.* at 2.

136. See *Roper*, 543 U.S. at 570 (majority opinion).

his fifteen and sixteen-year-old co-conspirators that “they could ‘get away with it’ because they were minors.”¹³⁷

So if age is an unreliable surrogate for maturity, how *should* a court evaluate the maturity of a juvenile offender? Individualized examination and psychological evaluation may provide far better information. Accordingly, the primary consideration in the individualized transfer decision should presumably be whether this particular juvenile has sufficient maturity to warrant being tried as an adult.¹³⁸

Without bright-line measures, of course, it may be difficult to ensure consistency in these decisions, but this type of tension is not new to criminal law.¹³⁹ It is closely analogous to the tension between uniformity and proportionality in sentencing.¹⁴⁰ It is worth noting that this tension has been the subject of lively debate for a long time, particularly since the rise of determinate sentencing in the 1980s, a legislative trend that closely tracks the trend in favor of trying juveniles as adults, and over precisely the same time period.¹⁴¹

Indeed, both of these initiatives—determinate sentencing and the trying of youth as adults—were apparently driven by the same burgeoning societal fears about violent crime in that time period.¹⁴² Scott and Steinberg describe that era as one of “moral panic” and explain the concept:

In a moral panic, the public, the media, and politicians reinforce each other in an escalating pattern of intense and disproportionate concern in response to a perceived social threat posed by a particular group of individuals. These individuals are viewed with fear and hostility; they are deviants who aim to harm society, and they threaten the moral order—“the enemy,” as Erich Goode and Nachman Ben-Yehuda described them in their authoritative analysis. Although sometimes the targeted enemy poses an imaginary threat (the Salem “witches,” for example), more often a moral panic focuses on individuals who do real harm, such as sexual abusers or members of criminal street gangs.¹⁴³

137. *Id.* at 555.

138. *See* SCOTT & STEINBERG, *supra* note 84, at 118, 139.

139. *See* Richard S. Frase, *Punishment Purposes*, 58 STAN. L. REV. 67, 68 (2005).

140. *See id.*

141. *See id.* It is worth noting that the pendulum on determinate sentencing has swung dramatically back in the last few years as the sentencing guidelines were challenged and found to be constitutional *only* if they were not binding on judges. *United States v. Booker*, 543 U.S. 220, 223 (2005). While judges’ discretion and their ability to show leniency in appropriate cases has been restored, there has not been a corresponding pendulum swing in the juvenile justice area.

142. *See* SCOTT & STEINBERG, *supra* note 84, at 109.

143. *Id.* (footnote omitted) (citing ERICH GOODE & NACHMAN BEN-YEHUDA, *MORAL PANICS: THE SOCIAL CONSTRUCTION OF DEVIANCE* (1994)).

10. Seriousness of the Crime

The moral panic is not tied to the maturity or culpability of the offender, of course.¹⁴⁴ It is driven by the fear that we will be victims—and from the perspective of the potential victim, it does not matter how old the violent offender is, or what he understands about moral agency or responsibility.¹⁴⁵ Either way, we are the victims of violent crime, and if we fear such victimization, we want to crack down on these criminals who threaten us.¹⁴⁶

It is not surprising, therefore, that many of the transfer statutes are keyed *not* to the maturity level of the offender, but to the seriousness of the offense.¹⁴⁷ The legislature is reacting to fears of murder and gang violence, so to “get tough on crime,” it needs to start punishing these serious crimes more severely.¹⁴⁸ And that means punishing those who commit these scary crimes more harshly, regardless of whether they are juveniles or whether they have a sufficient level of maturity to warrant such serious punishments.

The result is a criminal justice system that now routinely subjects juveniles to prosecutions as adults, in many cases using this bright-line seriousness-of-the-crime test, which requires no individualized hearing on, or consideration of, the maturity of the particular offender.¹⁴⁹ As a result, more juveniles are getting the punitive and retributive sentences dictated for adult offenders without the opportunity for rehabilitation that a juvenile court might have afforded them.¹⁵⁰

V. RECONCILING DIVERGENT EXPECTATIONS FOR YOUNG PEOPLE

The result of these two shifts, going in opposite directions, is the widening maturity gap. We expect juvenile offenders to be mature enough to be tried and punished like adults. But at the same time, we have lowered, and continue to lower, our expectations for the maturity of young people outside the criminal justice system. How can these two trends in societal perception be reconciled?

A. Driven by Concern That the World Is a More Dangerous Place

Scott and Steinberg identify a driving force behind the shift to more punitive approaches to juvenile justice as the “moral panic,” associated with young people’s involvement in street gangs and other violent crime.¹⁵¹ This provides the incentive to be ever more protective of our own children, and to

144. *See id.* at 109–12.

145. *See id.*

146. *See id.*

147. GRIFFIN ET AL., *supra* note 11, at 6 (discussing “statutory exclusion”).

148. SCOTT & STEINBERG, *supra* note 84, at 111–12.

149. *See generally* GRIFFIN ET AL., *supra* note 11 (analyzing states’ transfer laws).

150. *See id.*

151. *See* SCOTT & STEINBERG, *supra* note 84, at 109.

crack down on those dangerous juveniles who are threatening our own children and us.

But *is* the world a more dangerous place? There is a wealth of evidence suggesting that the world is far safer, for kids in the United States anyway, than it has ever been.¹⁵² Professor Bryan Caplan, who has studied the statistics in-depth, observes that “[c]hildren under five years old are almost five times as safe today as they were in the Idyllic Fifties.”¹⁵³ He goes on: “Conditions today aren’t merely better. They [have] improved so much that government statisticians changed their denominator [for youth mortality] from deaths per 1,000 to deaths per 100,000.”¹⁵⁴

As for violent crime perpetrated by youth gangs and others, crime statistics show a dramatic decline.¹⁵⁵ A 2006 report by the United States Department of Justice showed that “the rate of juvenile violent crime arrests ha[d] decreased consistently since 1994, falling to a level not seen since at least the 1970s.”¹⁵⁶ The numbers, confirmed in other studies and reports, are dramatic, including a 65% drop in juvenile homicide from 1994 to 2002.¹⁵⁷ The declines have continued over the last decade as well, with California reporting that, in 2011, juvenile crime rates had fallen to an *all-time low*, dating back to 1954 when the state first started keeping such statistics.¹⁵⁸ And these crime rates are not close to those of the 1950s, which so many Americans view as a safer time.¹⁵⁹ Juvenile crime rates in California in the 1950s were, in fact, 2.5 times higher than in 2011.¹⁶⁰

It is possible that this drop in juvenile crime is attributable, at least in part, to the harsher punishment of juveniles—evidence that the policy of treating them like adults has been effective in curtailing juvenile crime. Scott and Steinberg dispute that conclusion;¹⁶¹ but whatever the cause of the decline, the public perception that the world is more dangerous than ever is clearly without basis at this point.¹⁶² Nonetheless, perceptions drive policy, and there has been no retreat from the redirection of juveniles into the adult criminal justice system even though the continuing need for such measures is now in doubt.

152. DANIEL GARDNER, *THE SCIENCE OF FEAR: WHY WE FEAR THE THINGS WE SHOULDN’T—AND PUT OURSELVES IN GREATER DANGER* 290–304 (2008) (describing how the world is safer now than it has ever been before).

153. BRYAN CAPLAN, *SELFISH REASONS TO HAVE MORE KIDS: WHY BEING A GREAT PARENT IS LESS WORK AND MORE FUN THAN YOU THINK* 6 (2011).

154. *Id.* at 96.

155. *See Justice Resource Update*, U.S. DEP’T JUST. (2006), https://www.ncjrs.gov/jru/spring_2006/new.html.

156. *Id.*

157. HOWARD N. SNYDER & MELISSA SICKMUND, U.S. DEP’T OF JUST. *JUVENILE OFFENDERS & VICTIMS: 2006 NAT’L REP.* 65 (2006), <http://www.ojjdp.gov/ojstatbb/nr2006/downloads/chapter3.pdf>.

158. MIKE MALES, *CTR. ON JUVENILE AND CRIMINAL JUSTICE, CALIFORNIA YOUTH CRIME PLUNGES TO ALL-TIME LOW* 1 (2012), http://www.cjci.org/files/CA_Youth_Crime_2011.pdf.

159. *See id.*

160. *Id.*

161. SCOTT & STEINBERG, *supra* note 84, at 195–99.

162. *See supra* Part II.C.

Indeed, notwithstanding good data documenting the dramatic decline in risk and in crime, surveys show that perceptions have not changed: people in the United States believe their society is more dangerous now than in the past.¹⁶³ As already noted, in a “moral panic” situation, “sometimes the targeted enemy poses an imaginary threat (the Salem ‘witches,’ for example).”¹⁶⁴ And even when the threat is real, “the seriousness of the threat and the number of offenders are greatly exaggerated.”¹⁶⁵ The defining feature of moral panic “is the gap between the perception of the problem and the reality.”¹⁶⁶

There are a number of reasons why people may overestimate the threat of harm to themselves and to their own children. One such factor is the news media, which can increase viewership by inflaming the common fears of parents when reporting violent crimes.¹⁶⁷ The teaser “will your child be next?” virtually guarantees that the parent will sit through the report and see what horrible thing happened to someone else’s child.¹⁶⁸ Marketers of safety devices also inflame and tap fears in order to boost sales.¹⁶⁹ “Fear is a great marketing prod to parents; it engages their laudable instinct for protection. Manufacturers of all the safety devices sense parental concerns—and then whip them up to a fever pitch in their marketing strategies.”¹⁷⁰ A psychological concept called the “availability heuristic” also comes into play; it suggests that if people can easily recall a particular occurrence, they will naturally conclude that such occurrences are common.¹⁷¹ The television viewer who gets a steady diet of on-screen depictions of violent attacks or child abductions will conclude that such long-odds tragedies are common, giving rise to unjustified fears and feeding the moral panic.¹⁷²

When media and marketing lead to moral panic, the audience response is not limited to viewing newscasts or making safety-related purchases. These citizens also demand that their legislative representatives “do something” to

163. WARWICK CAIRNS, *HOW TO LIVE DANGEROUSLY: THE HAZARDS OF HELMETS, THE BENEFITS OF BACTERIA, AND THE RISKS OF LIVING TOO SAFE* 6 (2008).

164. SCOTT & STEINBERG, *supra* note 84, at 109.

165. *Id.* at 110.

166. *Id.* at 109–10.

167. See Rachel Lyon, *Media, Race, Crime, and Punishment: Re-Framing Stereotypes in Crime and Human Rights Issues*, 58 DEPAUL L. REV. 741, 744 (2009). Lyon explains:

[T]he need for “good numbers”—that is, high viewership—influences every channel, newspaper, and advertiser to aggressively compete for advertising and viewership within the ever-fragmented media marketplace. This can result in a willingness to show more “low-brow” images, and to “hawk” violence with redoubled vigor.

. . . In television and print news, far from merely reporting objectively on crime, media companies are now major stakeholders that profit from our carefully cultivated *fear of crime*.

Id. (emphasis added).

168. Pimentel, *supra* note 1, at 964.

169. HARA ESTROFF MARANO, *A NATION OF WIMPS: THE HIGH COST OF INVASIVE PARENTING* 77 (2008).

170. *Id.*

171. GARDNER, *supra* note 152, at 46–48.

172. Pimentel, *supra* note 1, at 983–85.

stem the perceived threat.¹⁷³ The crackdown on juvenile offenders, including the insistence that they be treated like adults, is the natural political consequence of widespread public fear about youth gang activity. And the political reality is no less real just because the public's fear is unfounded.

B. Separating Seriousness of the Crime from the Maturity of the Offender

A “moral panic” inspired clamor to “get tough” on juvenile offenders has resulted in channeling more and more juveniles into the adult criminal justice system.¹⁷⁴ The dramatically reduced threat of juvenile violence suggests that the diversion of juveniles away from the juvenile court system may no longer be warranted, if it ever was.¹⁷⁵ But if *any* juveniles are to be tried as adults, we need a principled basis for determining which offenders are appropriate candidates for such treatment.

While the primary focus has been on the nature of the crime—with minor offenses tried in juvenile court but serious crimes prosecuted in the adult system—there are compelling reasons to focus the inquiry on the particular offender, rather than on the particular crime.¹⁷⁶ The analysis goes back to the very purposes of criminal punishment and the recognition that juvenile court proceedings are aimed very much at rehabilitating and reclaiming wayward youths, while the adult system has become increasingly focused on retribution.¹⁷⁷

1. The Retribution Versus Rehabilitation Debate

As a general rule, if an offender is a good candidate for rehabilitation, it is certainly in society's best interest to invest in rehabilitation.¹⁷⁸ Retribution is expensive, and its social benefits, such as they are, are limited to the elusive “deterrent” effect.¹⁷⁹ The law of diminishing marginal returns suggests, however, that the deterrent effect of increasing punishment from ten years to twenty years is minimal, while the cost of administering the more severe penalty is very high indeed.¹⁸⁰ Moreover, there is evidence to suggest that a significant number of our criminals today are not deterrable; they simply do not, when deciding whether to engage in crime, conduct the cost-benefit analysis

173. See *id.* at 965.

174. See generally GRIFFIN ET AL., *supra* note 11 (discussing how the surge of juvenile violence led to reform of transfer laws, resulting in expanded coverage).

175. See *id.* at 9.

176. See SNYDER & SICKMUND, *supra* note 157, at 63.

177. See Julianne P. Sheffer, Note, *Serious and Habitual Offender Statutes: Reconciling Punishment and Rehabilitation Within the Juvenile Justice System*, 48 VAND. L. REV. 479, 481 (1995).

178. See Amy M. Campbell, *Trying Minors as Adults in the United States and England: Balancing the Goal of Rehabilitation with the Need to Protect Society*, 19 SUFFOLK TRANSNAT'L L. REV. 345, 351–57 (1995).

179. See *id.* at 354–55.

180. See ROBERT COOTER & THOMAS ULEN, *LAW & ECONOMICS* 475–79 (6th ed. 2012).

predicted by Gary Becker.¹⁸¹ These undeterrable criminals are driven by irrational impulses, intoxication-impaired judgment, or addiction-based desperation to commit crimes for which the expected punishment far exceeds the expected benefit.¹⁸² Increasing the punishment for these crimes cannot be expected to further deter such persons from committing them.¹⁸³

2. Rehabilitation Versus Retribution for Juveniles

The significance of minority on this debate is two-fold. First, the young person is almost always a better candidate for rehabilitation than the adult. Second, the deterrent effect that one might expect from the harsh sentencing handed down in the adult system is far less likely to deter the young, who are inherently more impulsive and less reflective in their behavior.¹⁸⁴

On top of that, the cost to society of putting someone in prison for life—something required for many offenders under mandatory sentencing laws such as California’s “Three Strikes” law—is far higher if that person is young.¹⁸⁵ Life-expectancy alone will make it an expensive proposition.¹⁸⁶ The concept behind Three Strikes sentencing is that a recidivist on his third strike is a hopeless case and should be locked up forever for the protection of society.¹⁸⁷ But one might question whether it is ever appropriate to declare someone a “hopeless case” when they have not yet reached full maturity and brain development.

There are compelling reasons that the adult system—with its retributive, justice-driven, harsh penalties—is ill-suited to the juvenile.¹⁸⁸ Rehabilitation should be the presumption and the default objective in *any* criminal proceeding against a juvenile, regardless of the severity of the offense.

181. Gary S. Becker, *Crime and Punishment: An Economic Approach*, 76 J. POL. ECON. 169, 173–77 (1968). Becker won the Nobel Prize in Economics in 1992, in significant part for his work on the economics of crime and punishment. *The Concise Encyclopedia of Economics: Gary Stanley Becker*, LIBR. ECON. & LIBERTY, <http://www.econlib.org/library/Enc/bios/Becker.html> (last visited Oct. 10, 2013). He is credited with explaining the economic incentives behind criminal behavior—including why it may be rational to commit crime, for instance, when the punishment is light enough or the probability of escaping detection is high enough, the cost-effectiveness of various deterrence measures, and how optimal investments in deterrence will never reduce crime to zero. *Id.*

182. David I. Shapiro, Note, *Sentencing the Reformed Addict: Departure Under the Federal Sentencing Guidelines and the Problem of Drug Rehabilitation*, 91 COLUM. L. REV. 2051, 2072–73 (1991).

183. *See id.*

184. *See* GRIFFIN ET AL., *supra* note 11, at 26.

185. *See* Michael Vitiello, *Reforming Three Strikes’ Excesses*, 82 WASH. U. L. Q. 1, 8–17 (2004).

186. *See Life Expectancy*, CENTERS FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/nchs/fastats/lifexpec.htm> (last visited May 29, 2013).

187. *See* Vitiello, *supra* note 185, at 8.

188. *See supra* notes 162–64 and accompanying text.

3. *The Significance of Seriousness of the Crime*

Legislators clearly believe that serious crimes call for serious penalties, regardless of the maturity or capacity of the offender.¹⁸⁹ Legislators are responding, as should be expected, to voter sentiment, and the public at large hates to see criminals escape punishment.¹⁹⁰ Deficient judgment or impaired mental capacity often looks like a “loophole” to the public, a technicality that allows the person responsible for a horrific event to escape any responsibility for the tragedy he precipitated.¹⁹¹

Examples are easy to find. After John Hinckley was found not guilty by reason of insanity for the assassination attempt on President Reagan, there was a public outcry.¹⁹² Our elected representatives in Congress moved swiftly to amend the statute governing such crimes to place a higher burden of proof on the defendant asserting an insanity defense.¹⁹³ Similar public dismay was expressed over the success of the “diminished capacity” defense in Dan White’s trial for the assassination of San Francisco Mayor George Moscone and Supervisor Harvey Milk.¹⁹⁴

For notorious crimes like these, the public demands that *someone* be held responsible and pay dearly for the offense.¹⁹⁵ The outrage is driven by the seriousness of the offense and the need to hold someone accountable for it. Defense lawyers know this effect well; it raises the concern that jurors will find the defendant guilty, even on inconclusive evidence, because they cannot stand the thought that such a terrible crime might go entirely unpunished.

Similar sentiment undoubtedly drives the states that prescribe adult punishment for juveniles charged with serious crimes. The public’s need to punish *someone* is an irrational sentiment (much like kicking the car after it breaks down or throwing the remote at the television after watching the home team lose), unworthy of reinforcement through the law. The juvenile who disappoints us is worth trying to salvage; without an attempt at rehabilitation, society is resigned to bearing the cost of that juvenile’s wasted life.

189. See *supra* note 147 and accompanying text.

190. See *infra* notes 192–94 and accompanying text.

191. See *infra* notes 193–95 and accompanying text.

192. See Randi Elias, *Should Courts Instruct Juries as to the Consequences to a Defendant of a “Not Guilty by Reason of Insanity” Verdict?*, 85 J. CRIM. L. & CRIMINOLOGY 1062, 1066 (1995).

193. See *id.*

194. See JOHN Q. LA FOND & MARY L. DURHAM, *BACK TO THE ASYLUM: THE FUTURE OF MENTAL HEALTH LAW AND POLICY IN THE UNITED STATES* 67 (1992).

195. See *id.*

VI. CONTRASTING THE TREATMENT OF CHILD SOLDIERS

A. *The Child Soldier Phenomenon in East Africa and Elsewhere*

A fascinating contrast is created when we compare how our criminal justice system treats child offenders with how the world views the problem of child soldiers. The Lord's Resistance Army (LRA) in Uganda has been implicated in the recruitment of child soldiers, and members of its leadership were the first to be indicted in the International Criminal Court (ICC) for crimes against humanity.¹⁹⁶ No question exists that many of the horrific attacks and killings done by the LRA have been carried out by children abducted and inducted into that organization.¹⁹⁷ Indeed, it has been reported that one of the first things required of a child brought into the LRA is that the child go back and kill his or her own parents.¹⁹⁸ This reduces any risk that the child will ever be tempted to run home, or even to the village he or she once called home.¹⁹⁹

B. *Why Aren't These Child Soldier Juveniles Blamed?*

Notwithstanding the fact that these awful crimes are being committed by minors, and that the world is aware of and lamenting these terrible abuses of human rights, no one appears to be blaming the juveniles.²⁰⁰ The ICC, in fact, has no jurisdiction over juveniles.²⁰¹ Despite the terrible offenses committed by these children, there is no outcry calling for their prosecution. In fact, the references to child soldiers in UN documents and other international reports on the problem, almost without exception, discuss them as victims, rather than perpetrators.²⁰²

Why is there not a political will to round up and punish these child soldiers in Uganda? Overwhelmingly, these young offenders inducted into the LRA are viewed as victims: innocent children swept up in political and criminal

196. *ICC Finds Congo Warlord Thomas Lubanga Guilty*, BBC NEWS: AFRICA (Mar. 14, 2012, 4:27 PM), <http://www.bbc.co.uk/news/world-africa-17364988>. The first person to be convicted by the ICC, Thomas Lubanga Dyilo in the Democratic Republic of the Congo, was convicted for the forcible recruitment of child soldiers. *Id.*

197. Rory Carroll, *Face to Face with Joseph Kony's Child Soldiers*, GUARDIAN (Mar. 8, 2012, 12:42 PM), <http://www.guardian.co.uk/world/2012/mar/08/joseph-kony-child-soldiers>.

198. Julian Borger, *Q&A: Joseph Kony and the Lord's Resistance Army*, GUARDIAN (Mar. 8, 2012, 1:21 PM), <http://www.guardian.co.uk/world/2012/mar/08/joseph-kony-lords-resistance-army>.

199. Carroll, *supra* note 197.

200. *See id.*

201. Rome Statute of the International Criminal Court art. 26, July 17, 1998, 2187 U.N.T.S. 90.

202. Pacifique Manirakiza, *Les Enfants Face au Système International de Justice: À la Recherche d'un Modèle de Justice Pénale Internationale pour les Délinquants Mineurs*, 34 QUEEN'S L.J. 719 (2009) ("The dominant view in international law is that minors who have committed international crimes, such as genocide, crimes against humanity or war crimes, are victims of the adults who recruited them and are not legally culpable.") (English language abstract); *see generally* MARK A. DRUMBL, REIMAGINING CHILD SOLDIERS IN INTERNATIONAL LAW AND POLICY 102–33 (2012) (examining accountability of child soldiers in international crimes).

forces far beyond their ability to reckon or cope. In the United States, however, when a child growing up in the inner city gets swept up in the gang culture and is inducted into a criminal gang, the impulse is not to view that youth as a victim.²⁰³ Our society will view that individual as a threat and not only seek to punish him for his crimes, but to ignore his youth and treat him as if he were an adult in that prosecution.²⁰⁴

1. *Forcible Abduction v. Voluntary(?) Joining of a Street Gang*

Why the difference? First, the LRA abducts these kids forcibly, whereas the American gang member presumably makes some kind of decision to join up with the criminal organization.²⁰⁵ Of course, if the child is growing up in a seriously dangerous neighborhood, that choice may be illusory. It is possible that the young person, driven by self-preservation, may find gang membership to be the safest haven, as membership gives him protectors—his fellow gang members—in the daily maelstrom of violence that he calls home. In some places, there is no choice at all; a young person is affiliated with a gang automatically by virtue of where he or she lives.²⁰⁶

2. *Inner-City Youths Attempting to Appear More Like Adults*

At the same time, the inner city youth intent on survival may find it necessary to exhibit adult-like attributes: to walk with a swagger and act tough when anyone dares to challenge him. Shedding the trappings of vulnerability (and innocence) may be the best, or only, way to get menacing forces to back down, and to get some respect on the streets. Even young girls may feel that it is necessary to look and act more like grown women, dressing in a highly sexualized way despite their tender years, to assert power and make their way in the rough neighborhoods they live in. Ironically, these behaviors, adopted by vulnerable kids in desperate attempts to compensate for their vulnerability, makes them look more “adult” and more threatening from the perspective of the

203. See *supra* Part IV.

204. See *supra* Part IV.

205. See *This American Life Broadcast No. 487: Harper High School, Part One*, CHIC. PUB. MEDIA (Feb. 15, 2013), <http://www.thisamericanlife.org/radio-archives/episode/487/transcript#sthash.InAEgcSe.dpuf>

206. *Id.* A recent broadcast of National Public Radio’s “This American Life” highlighted this fact in the neighborhoods surrounding Chicago’s Harper High School:

When I ask kids what their parents don’t understand about gangs these days, they say it’s this. Their parents tell them not to join a gang, as if there’s some initiation to go through, some way to sign up. Today, whether or not you want to be in a gang, you’re in one. If you live on pretty much any block near Harper High School, you have been assigned a gang. Your mother bought a house on 72nd and Hermitage? You’re S Dub. You live across the street from the school? That’s D-Ville.

Id.

criminal justice system. We may feel comfortable prosecuting *these* kids as adults because they look and act so much like the adults we fear.

3. *“There But for the Grace of God, Goes My Kid”*

Finally, there may be a distinction between Ugandan child soldiers and American youth gang members in that every Ugandan family knows that their child is at risk of LRA abduction. The sense that “that could be my child” engenders sympathy for the child who is otherwise responsible for horrific, violent crimes. In America, it is only the kids in those gang-riddled neighborhoods who are susceptible to those violent criminal associations. More affluent and more suburban Americans are less likely to identify or empathize with this dynamic. It is far easier to condemn or demonize someone else’s child if one’s own child is not at risk of a similar fate.

VII. INTERPRETING THE WIDENING GAP IN TERMS OF AN “US VERSUS THEM” MENTALITY

The impulse to be protective of our own children and to be merciless to those who threaten them (and us) goes a long way toward explaining this growing maturity gap. But it highlights the dissonance between increased recognition of the vulnerability and immaturity of emerging adults, and the simultaneous desire to hold young hoodlums accountable as adults for the threats and social disruption they cause. And this tension reveals and exacerbates a deeply disturbing “us v. them” divide in our society.²⁰⁷

If modern parents, with support from recent neuroscience research, believe that their college-age kids are not fully self-sufficient and still need support because they cannot be trusted to manage their own lives at that stage, the same must be true of the far less privileged inner-city kids who are being prosecuted for their own lapses of judgment at these and at much younger ages. Ironically, one might expect the child from the more privileged background to be advantaged in this regard and more capable of exercising judgment thanks to the advantages of the education, safety, and security that he has had better access to over the course of his young life. But the law, at least as it now functions, is far more likely to push the underprivileged juvenile from the urban core into the regular, adult criminal justice system.

To the extent that society perpetuates this widening maturity gap, as appears to be happening at present, it is applying an offensive double-standard, one that seems certain to divide our society further, both socioeconomically and racially. It is a most regrettable impact, all the more tragic because it is driven

207. The child soldier scenario does not produce this same effect because the villages threatened by child soldiers also face the threat of having their own children abducted and inducted as child soldiers. Anytime a parent says “There But for the Grace of God, Goes My Kid,” the sympathy for the kid is likely to outweigh the fear of him.

by irrational fears and faulty perceptions as to the dangerousness of our society and the level of juvenile crime in society.

VIII. CONCLUSION

Over the course of the past generation, shifting attitudes about children in society have created a curious anomaly in how we treat them. Generally, especially in the realm of parenting, young people are given more protection than ever before, and trusted with less self-sufficiency and independence than ever before.²⁰⁸ These paternalistic attitudes toward young people continue well beyond adolescence and into early adulthood.²⁰⁹ At the same time, our society has increasingly opted to treat juvenile offenders in quite the opposite way, trying more and more of them as if they were adults, as if their youth, inexperience, and immaturity were irrelevant, thereby subjecting them to the full force of retributive justice.²¹⁰

These conflicting trends appear to be driven by the same source: the perception that the world is a more dangerous place than in the past and the fear for the safety of ourselves and our children.²¹¹ Juvenile offenders, particularly those associated with street gangs, are perceived as threats to our safety, and particularly as threats to our children.²¹² The data shows that these fears and perceptions are ill-founded, that children are much safer today than ever before in history, and that juvenile crime has been on a dramatic decline.²¹³ Moreover, recent studies in neuroscience support the view that “emerging adults” in their early twenties are still developing the capacity to control their behavior, suggesting that the criminal justice system should respond to these young offenders, and *a fortiori* to juveniles, with leniency and rehabilitative options.²¹⁴

Accordingly, it is time to reevaluate the present policies that subject young offenders to the adult system of criminal justice. Juveniles should, as a rule, be treated as strong candidates for rehabilitation and given an opportunity to “mature out” of their criminal behavior, rather than branded as hopeless cases and subjected to retributive punishments.

Parents, neuroscientists, and car rental companies appear to be on the same track here; it is the criminal justice system that is out of sync. A better appreciation of the true risks to and from children, as well as an allowance for their continuing brain development in late adolescence and early adulthood, call for a dramatic retreat from the present policy of trying so many of them as adults. The fear-driven public policy behind the current regime is bad for kids

208. *See supra* Part II.

209. *See supra* Part II.

210. *See supra* Parts IV, V.

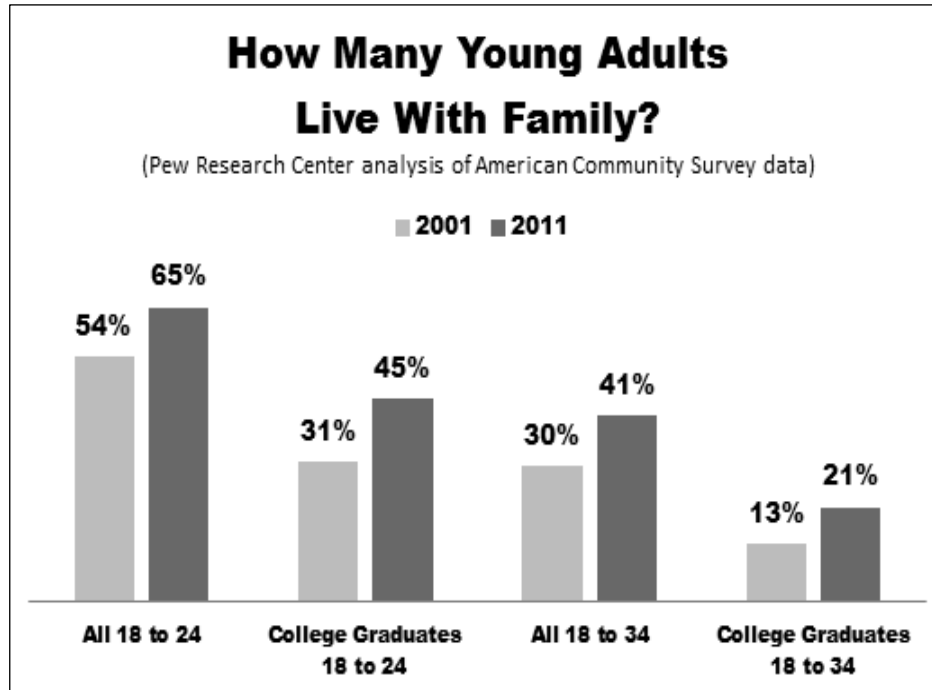
211. *See supra* Part II.C.

212. *See supra* Part V.B.

213. *See supra* Part V.A.

214. *See supra* Part IV.

and, to the extent it feeds (and feeds on) the “us v. them” divisions between socioeconomic and ethnic groups, it threatens to be highly destructive to the moral and social fabric of American society.

APPENDIX²¹⁵

215. Weissmann, *supra* note 3 (graphic reproduced from Weissmann's article in ATLANTIC).