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TOO YOUNG TO BE REHABILITATED? COMMENTS ON  
LIPSEY'S "CAN REHABILITATIVE PROGRAMS REDUCE  
THE RECIDIVISM OF JUVENILE OFFENDERS?"

**Emily Buss\***

For those of us who are concerned with the trend toward treating juveniles like adults when they are accused of committing crimes, Dr. Lipsey's meta-analytic findings offer considerable hope. Or do they?

At first blush, Dr. Lipsey's findings suggest strong support for the maintenance of a separate juvenile justice system grounded on a rehabilitative purpose. The primary justification for such a system is that still-impressionable children who have strayed can be treated and cured, thereby improving their life prospects while making the streets safer for all of us. Lately, this justification has been challenged by politicians exploiting voter fear of juvenile offenders, and social scientists who have been unable to demonstrate that the juvenile justice system is having any success in rehabilitating these offenders. Dr. Lipsey suggests that a more careful consideration reveals that some programs *have* had a significant positive effect on recidivism rates. The key, he sensibly suggests, is to sort by program type. In the midst of many unsuccessful programs, Dr. Lipsey identifies a handful of strategies that work.

Dr. Lipsey offers some nice particulars to counter the predictable qualifications: Programs can work "on the street," and not just in the artificial context of demonstration projects. Programs can succeed with violent as well as non-violent offenders, and with more as well as less-serious offenders. Programs, it appears, can work with a broad range of minors, in a broad range of contexts. But there's a hitch: According to Dr. Lipsey's data, reha-

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ilitative programs may be significantly less likely to work on younger offenders.

In the end, Dr. Lipsey's analysis may raise questions about the most fundamental assumption underlying traditional support for a separate juvenile system: The system is premised, not on the simple assumption that children can be rehabilitated, but that children are particularly open to rehabilitation because of their incomplete development. We are less hopeful about rehabilitating adults, who we assume are more fixed in their ways. Perhaps, however, we have it backwards. Perhaps individuals require maturity before they can benefit from rehabilitative programs. Perhaps rehabilitation is wasted on the young.

### I. THE GOOD NEWS

While there is increasing sentiment to eliminate the separate juvenile justice system altogether,<sup>1</sup> actual reforms have focused on excluding the oldest and most violent juveniles from this separate system. States are increasingly reducing the maximum offender age for juvenile court jurisdiction and reducing the age at which judges and prosecutors have discretion to transfer minors to adult court.<sup>2</sup> For a growing number of violent crimes, states have made it easier for prosecutors to charge minors in adult court and, in some cases, states even mandate the adult prosecution of certain violent offenses. These changes reflect the public's increasing fear of near-adult offenders, and decreasing faith in our ability to change these so-called "super-predators"<sup>3</sup> behavior.

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<sup>1</sup> See, e.g., Janet E. Ainsworth, *Re-Imagining Childhood and Reconstructing the Legal Order: The Case for Abolishing the Juvenile Court*, 69 N.C. L. Rev. 1083, 1085 (1991) (arguing that minors charged with crimes would be better served if afforded the protections of the adult criminal system); Barry C. Feld, *Abolish the Juvenile Court: Youthfulness, Criminal Responsibility, and Sentencing Policy*, 88 J. Crim. L. & Criminology 68, 69 (1997) (arguing for a single criminal justice system in which youthfulness is treated as a mitigating factor in sentencing).

<sup>2</sup> See Jeffrey Fagan & Elizabeth Piper Deschenes, *Determinants of Judicial Waiver Decisions for Violent Juvenile Offenders*, 81 J. Crim. L. & Criminology 314, 315-16 (1990) (summarizing actions taken in a majority of states since 1978 to reduce the jurisdiction of juvenile courts and expand the number of crimes and juveniles subject to adult criminal jurisdiction).

<sup>3</sup> This term has come to symbolize the public attitude toward violent juvenile offenders. See, e.g., William J. Bennett et al., *Body Count: Moral Poverty . . . And How to Win America's War Against Crime and Drugs* 26 (1996) (declaring, under the sub-heading

Dr. Lipsey's analysis challenges the focus of this trend. He concludes that neither the violence of the offenses nor the greater age of the offender stands in the way of effective rehabilitation. What matters, his analysis suggests, is the type of programming provided.

Dr. Lipsey charts two paths to rehabilitative success. First, he notes, as others have before him, that demonstration projects produce excellent results. Second, he counters conventional findings by identifying some non-demonstration, or "practical" programs that also yield significant reductions in recidivism rates. It is my hunch, based on Lipsey's data and my own observations of successful programming for troubled adolescents, that these two paths converge on a single list of salient characteristics. In all likelihood, the successful practical programs capture much of the intensity of attention that makes for success in the demonstrations.

It is not surprising that demonstration projects yield high rates of success. Researchers have considerable expertise and interest in what they are studying (and usually in demonstrating their program's success), and are motivated to ensure program compliance and careful documentation of results. The expertise of program designers and the staff they carefully select to implement their test programs ensures that a high-quality product will be delivered to each participating juvenile. The careful monitoring of service delivery and outcomes ensures that problems faced in implementation will be quickly identified and addressed throughout the study's duration. Moreover, this interest in the program's implementation will produce, not only a more correct implementation, but also a more enthusiastic one. This enthusiasm will, in turn, be conveyed to the juvenile clients themselves. In all likelihood, the juvenile clients served by these programs will get some sense of how seriously the implementers are taking the program, and, through the program, how seriously they are taking the juveniles as well. If juveniles get the message that "people here really care about doing things right in their program," the implementer's seriousness of purpose is likely to translate into a greater commitment

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"Super-Predators," that "[a] new generation of street criminals is upon us—the youngest, and baddest generation any society has ever known").

to the program from the juveniles themselves.<sup>4</sup>

The challenge, of course, is to maintain program success after this intensity of attention is withdrawn. As programs shift from demonstration to implementation, those with the greatest commitment to, and expertise in, program success no longer bear primary responsibility, and those who take over are often distracted by other matters in their overly full workloads and underfunded budgets. Even assuming the best of intentions and highest level of motivation among those charged with implementing programs in the "real world," it is difficult for them to duplicate the time, money and expertise available to the researchers who conducted the original demonstration.

Among the "practical programs" that show the greatest rates of success in reducing recidivism rates I would expect to find those that come the closest to mirroring the attributes of a demonstration project. They are, I would guess, those that rest upon the development of an intense relationship between the juvenile and service provider, overseen by those with expertise, and monitored carefully for compliance. While Dr. Lipsey's analysis is much too careful to draw such sweeping conclusions, I will exercise the prerogative of the extra-disciplinary commentator and conclude that his meta-analysis seems to support this very connection.

The list of successful practical programs Lipsey identifies varies considerably in the type of service provided: Some programs focus on academic achievement, others on restitution, still others on psychological issues. What they appear to have in common, however, is a certain intensity—successful programs involve at least five hours of contact between the provider and the juvenile each week, and last for several months. The most successful programs are also the mandatory programs, and particularly those tied to the Juvenile Court and provided by juvenile justice or probation personnel. Put all these factors together, and a program starts to look like a demonstration program: The mandatory nature of the program presumably increases the motivation of juvenile and pro-

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<sup>4</sup> See, e.g., Stanley Coopersmith, *The Antecedents of Self-Esteem* 38 (1967) (noting the correlation between high self-esteem and increased effectiveness in meeting societal demands, and identifying a sense of "significance," created by the attention to and concern about one shown by others, as one component of self-esteem).

vider alike to comply with program criteria, particularly if compliance will be reviewed by a judge or probation official who has authority to impose consequences for failures of compliance. The tie to the juvenile justice system may increase the expertise of the service providers. Most importantly, the frequency and duration of contact surely facilitates the development of an intense relationship between service provider and juvenile which, in turn, is likely to enhance both participants' commitment to the program and improve the quality of the interaction between them.

In my experience, now bolstered by Dr. Lipsey's analysis, the most important attribute of program success is this intensity, and, particularly, the intensity of the relationship that forms between service provider and juvenile. Just as demonstration projects are likely, generically, to yield better results than practical programs, programs that offer this intensity are likely to show better results than their less intensive counterparts, regardless of the particular subject focus of the program.

Absent the development of a fairly intense relationship between service provider and juvenile, it is unlikely that a program can achieve the kind of personal transformation, a reduction in the juvenile's inclination to commit crimes, that counts as success. To achieve such a personal transformation, the program asks the juvenile to work hard, whether at academics, at a plan of restitution, or at therapy, and, in turn, the program offers the juvenile help with the work. For the arrangement to succeed, the service provider must get to know the individual juvenile quite well, and the juvenile, in turn, must come to trust the service provider. Without a good understanding of the juvenile, the service provider will not be able to identify what particular help the individual juvenile needs, and absent a relationship of trust, the juvenile will not be motivated to do the hard work. These two developments are, of course, interrelated: The more the service provider indicates an understanding and sympathy for the individual juvenile, the more the juvenile will trust him, and the more the juvenile demonstrates her trust in the service provider (through her candor and attention, among other things), the better that provider will understand the juvenile. The best way to facilitate this kind of a relationship is to require the two to spend considerable amounts of time together—time devoted to the common project at hand.

me devoted to the common project at hand.

Facilitating these intense relationships will surely increase the chance of successfully altering juveniles' behavior. It will also surely be expensive, and for this reason, such programs may be politically unpopular, despite their demonstrated success. The public is likely to be particularly resistant to paying for such services for older teens, the near-adults who are generally perceived as those least deserving of a special, treatment-oriented response to their criminal conduct. Dr. Lipsey's analysis, however, suggests that it is on precisely these older juveniles that the money will be most well spent.

## II. THE PUZZLE

Much of what Dr. Lipsey discovers in the data supports the maintenance of a separate, rehabilitation-focused, juvenile justice system, so long as lawmakers can find the political will to spend what it takes to make the system work well. A single finding, however, calls this approach into question. While the data suggest that the goal of rehabilitation is achievable for a wide range of juveniles, they exclude younger juveniles from the success story. Contrary to our assumptions that children are most open to rehabilitation when they are youngest, Dr. Lipsey's analysis points the other way: Programs serving children whose average age was less than fifteen and a half years old were found to be associated with smaller recidivism effects than those serving older children. The children who benefited most from the programs were those fast approaching adulthood. If the ability to profit from these programs increases with age, then it is hard to justify reserving a rehabilitation focused justice system for the youngest offenders.

Our separate juvenile justice system is grounded on the assumption that children are different from adults, and that this difference makes children less culpable for their acts, and more amenable to correction. Both of these distinctions are tied to children's cognitive, moral, emotional and social immaturity. Children are less culpable, the argument goes, because they have a less well developed sense of right and wrong, because they are less able to anticipate the consequences of their acts, because they have less impulse control, and because they are more vulnerable to peer

pressure.<sup>5</sup> Children are thought to be more amenable to treatment because all these forms of immaturity suggest that children are still in the process of developing, and therefore not yet set in their ways. Dr. Lipsey's analysis, however, suggests that we can draw different implications from children's ongoing development: Children's cognitive, moral, emotional and social maturation may improve their ability to engage successfully in rehabilitative programming.

There are, of course, other explanations for Dr. Lipsey's counter-intuitive data. Perhaps the recidivism rates of younger teens are so low to begin with that there is very little room for improvement through intervention.<sup>6</sup> Perhaps the younger cohort includes the most serious, least easily treated juveniles,<sup>7</sup> whose recidivism rates stay high, but who are screened out of the juvenile justice system by the time they reach mid-adolescence.<sup>8</sup> Or perhaps the studies captured in Dr. Lipsey's analysis concentrate on particular types of programs that succeed with older children at higher rates, whereas other programs not subject to these studies may better serve the needs of younger juveniles. None of these alternative accounts is inconsistent with a theory that suggests that the programs in question demand a certain maturity from their

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<sup>5</sup> See Elizabeth Cauffman & Laurence Steinberg, *The Cognitive and Affective Influences on Adolescent Decision-Making*, 68 *Temple L. Rev.* 1763, 1788 (1995) (suggesting that juveniles' lesser impulse control, greater vulnerability to peer influence and lack of perspective all interfere with the quality of their decision-making); Elizabeth S. Scott et al., *Evaluating Adolescent Decision Making in Legal Contexts*, 19 *L. & Hum. Behav.* 221, 223 (1995) (arguing that juveniles' differing perception and valuation of risk, greater vulnerability to peer and parental influence, and limited time perspective all undermine juveniles' ability to make good decisions on their own behalf).

<sup>6</sup> While this explanation could account for some portion of the data, I can find no studies supporting a correlation between young offending and low rates of recidivism. In fact, the available data seems to point the other way. See, e.g., Terrie E. Moffit, *Adolescence-Limited and Life-Course-Persistent Antisocial Behavior: A Developmental Taxonomy*, 100 *Psychol. Rev.* 674 (1993) (observing that chronic offenders, who demonstrate life-course-persistent antisocial behavior, begin exhibiting antisocial tendencies during childhood; dividing youthful offenders into short-term and life-long offenders; and citing studies suggesting that the life-long offenders tend to start offending early).

<sup>7</sup> See *id.* at 674-76.

<sup>8</sup> A common consideration in determining the appropriateness of trying a juvenile in adult court is the extent of the juvenile's prior history of offenses. It therefore can be predicted, even assuming a constant rate of re-offense among juveniles, that those who start offending at a younger age are also likely to be transferred to adult court at a younger age.

subjects in order to succeed. Indeed, to some extent, these alternative accounts appear to be direct complements of such a theory.

For lawyers who concentrate on the implications of children's development for defining the scope of their legal rights and responsibilities, 15½ is a strikingly familiar age. Much of the discussion of the age at which children gain the requisite capacities to give informed consent for medical treatment settles at roughly 15.<sup>9</sup> Studies of minor's ability to understand their legal rights and to follow proceedings in the criminal context suggest a significant shift at roughly 15.<sup>10</sup> And the Supreme Court's recent consideration of the suitability of executing individuals who committed capital crimes as minors draws a line at 15.<sup>11</sup>

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<sup>9</sup> See, e.g., Thomas Grisso & Linda Vierling, *Minor's Consent to Treatment: A Developmental Perspective*, 9 *Prof. Psychol.* 412, 423 (1978) (concluding that there is little psychological evidence to support the assumption that minors at age 15 and above cannot provide competent consent.) The discussion of minors' ability to provide informed consent focuses on children's ability to engage in reasoned decision-making. While young children exhibit some of the capacities associated with rational decision-making, it is not until the mid-teenage years that children are thought to be able to engage in rational decision-making at the same level as adults. At roughly this age, children demonstrate an adult-like capacity to understand information provided and to manipulate the information by applying it to their own life circumstances, and by assessing the various options presented according to their own values. At roughly this age, they are thought to be able to make choices that reflect a good application of their own internal psychology to a good understanding of the external world. This is not to say that their set of values will match those of adults, but rather that they reach decisions according to a process that closely mirrors the adult process. See *id.*

<sup>10</sup> In the criminal context, much of the developmental discussion has focused on minors' ability to understand their rights, particularly the right not to respond to state interrogators and the right to be assisted by counsel covered by the Miranda warning, see *Miranda v. Arizona*, 384 U.S. 436, 473-75 (1966), and, more generally, to understand the nature and purposes of the criminal proceeding. See, e.g., Thomas Grisso, *Juvenile's Capacities to Waive Miranda Rights: An Empirical Analysis*, 68 *Calif. L. Rev.* 1134, 1160-61 (1980) (reporting results of studies indicating that children under 15 are significantly more likely to misunderstand Miranda warnings than older children or adults); Thomas Grisso, *The Competence of Adolescents as Trial Defendants*, 3 *Psychol. Pub. Pol'y & Law* 3, 23-24 (1997) (concluding, based on a survey of numerous studies, that children under 14 years of age should be presumed incompetent to aid in their own trial defense and that children 14-16 should be individually assessed for trial competency).

<sup>11</sup> See *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989) (upholding the imposition of the death penalty on individuals who were 16 and 17 at the time they committed their capital crimes). Cf. *Thompson v. Oklahoma*, 487 U.S. 815, 838 (1988) (holding that the imposition of the death penalty on an individual who committed a capital crime at the age of 15 violated the Eighth Amendment's prohibition against cruel and unusual punishment). While the developmental discussion in these cases is fairly thin, the plurality in

Much of the developmental literature suggests that children achieve considerable adult-like capacities in mid-adolescence, which they do not share with many of their younger counterparts. In the mid-teenage years, most minors evince the capacity to think abstractly—to weigh a range of hypothetical options, to consider the likely consequences of each, and to evaluate each of those possibilities.<sup>12</sup> In the mid-teenage years, minors engage in moral reasoning at a more abstract, and more societally focused level—considering not just what will get them praised or punished, but what kinds of behavior are required for a successfully functioning, and (later still) for a just, society.<sup>13</sup> In the mid-teenage years, minors develop considerable sophistication in thinking about themselves and how they relate to others in their community.<sup>14</sup> All of these shifts will have an effect on their ability to understand and operate within the expectations of the law. Why should these significant cognitive, emotional, moral and social advancements not also have an impact on a minor's ability to engage in, and profit from, rehabilitative programming?

This is not to suggest that the youngest offenders are the least malleable and offer the least hope for change,<sup>15</sup> but rather, that these offenders may not be subject to effective manipulation in the particular form in question—namely the official public rehabilita-

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Thompson expressly suggests that one of the grounds for distinguishing crimes committed by teenagers, particularly teenagers under 16, is that they are less culpable for their crimes. 487 U.S. at 834-35. The opinion suggests that adolescents' lack of impulse control, greater vulnerability to peer pressure, and lesser ability to appreciate consequences, particularly long-term consequences, all reduce a minor's responsibility for his actions. 487 U.S. at 835-37.

<sup>12</sup> See Cauffman & Steinberg, *supra* note 5, at 1768 (summarizing studies suggesting that, by early adolescence, between the ages of 11 and 14, "adolescents are able to consider the possible in addition to the real, and to think both abstractly and hypothetically").

<sup>13</sup> See, e.g., Lawrence Kohlberg, *The Development of Children's Orientations Toward a Moral Order: Sequence in the Development of Moral Thought*, in *Social and Personality Development, Essays on the Growth of the Child* 388, 390-91 (William Damon ed., 1983) (reporting study results suggesting that societally focused, more abstract, moral orientation continues to develop through age 16).

<sup>14</sup> See William Damon & Daniel Hart, *Self-Understanding in Childhood and Adolescence* 33-35 tbl.2.1 & 44 (1988) (describing the child's development of an increasingly sophisticated and integrated concept of self through late-adolescence).

<sup>15</sup> As Moffit's consideration of life-long offenders suggests, however, some of the youngest offenders may, in fact, be the least amenable to rehabilitation. See Moffit, *supra* note 6, at 674.

tion program. Children, from the time of our earliest transgressions, are engaged in “rehabilitative programming”—that is, redirection and education aimed at producing a more rule-abiding child in the future. We are engaged in such programs of “treatment” in our homes, in our schools, and in our communities. Our rehabilitators are our parents, our teachers, our religious leaders, and our coaches. What is at issue in the public debate about amenability to treatment, however, is not such familiar, intimate rehabilitative responses, but rather the relatively impersonal and highly official responses of our law enforcement system. It may well take a certain social, moral, emotional and cognitive maturity to handle an intense interaction with an unknown professional, in the context of ongoing judicial activity.

### III. THE DEVELOPMENTAL OBSTACLES TO SUCCESSFUL REHABILITATION

I have already noted that Dr. Lipsey’s data suggest that we must demand a lot in the way of resources, expertise, and commitment from our programs of rehabilitation if we expect to see results. We must also place heavy demands on the children these programs are designed to serve. Dr. Lipsey’s study suggests that non-institutional (presumably home and community-based) services are more likely to be effective in reducing recidivism rates, and it seems intuitively obvious that community-based programs will do a better job of preparing a child to behave appropriately in the community, once the treatment period ends.<sup>16</sup> These programs, however, require the exercise of considerable responsibility on the part of the juvenile, responsibility that requires motivation, self-control, and the ability to take the long-view in the face of constant pressure from peers to focus on the present. Presumably, the successful programs are designed to assist children in exercising that responsibility by providing them with a fairly intense level of contact with a service provider; but even the ability to develop a

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<sup>16</sup> See Paul Holland & Wallace J. Mlyniec, *Whatever Happened to The Right to Treatment?: The Modern Quest for a Historical Promise*, 68 *Temp. L. Rev.* 1791, 1832 (1995) (noting that “[w]hat is missing from these negative-reinforcement strategies [such as boot camps and incarceration] is sufficient opportunity for youths to develop the skills that they will need in the settings where they eventually will live . . . and where they will have to make the difficult decisions that will take them away from the troubles of their past.”).

successful relationship with that service provider may require a level of social sophistication that only comes with maturity.

#### *A. Motivation and Commitment*

Most basically, the successful programs demand a high level of commitment to hard work in some area of weakness (academic, emotional, etc.). No one likes to do hard work for its own sake. We need to be motivated, and our motivation needs to be sustained. Immaturity can inhibit achievement of this motivation in numerous ways. First, minors' general focus on short-term consequences<sup>17</sup> and their susceptibility to peer influence<sup>18</sup> will interfere with their ability to understand, let alone value, the long-term benefits of program compliance. Even assuming they understand the basic connection between program compliance and the avoidance of unattractive consequences (such as incarceration) there is a real question whether younger adolescents will be able to put the avoidance of those consequences ahead of the pursuit of immediate rewards. Many adolescents will make the right choice when first confronted with it in the context of the court proceeding, particularly when that choice-making process is facilitated by family members, a lawyer, probation staff and the judge. At that point, the choice is obvious, and absolute. The juvenile is asked, "Are you willing to comply with program requirements, or are we going to need to lock you up?" But when the minor is called upon to remake the choice again and again every time an immediately attractive option offered by her peers is in temporal competition with her program obligations, she may not choose as wisely. Day to day, her ability to keep focused on the long-term picture, and, particularly, to appreciate how incremental choices will affect that picture, is likely to be highly compromised by her youth. So she may decide to skip a session, or to sneak out early.

Of course, the relevant motivation is not simply the motivation to attend. Even a child who understands that she must show up at

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<sup>17</sup> See Cauffman & Steinberg, *supra* note 5, at 1773 (observing that "[r]elative to adults, adolescents appear to view long-term consequences as less important than short-term consequences [and, for adolescents] the importance of long-term consequences is reduced by uncertainty about the future.").

<sup>18</sup> See *id.* (noting that susceptibility to peer influence peaks during adolescence).

every session to avoid being sent to a locked facility may lack the motivation required for effective participation. Unless the minor perceives her own agency, unless she sees herself as able to exercise control over the outcomes in question, she is unlikely to apply herself to the treatment task at hand, whether it is struggling through a writing assignment, or engaging in self-scrutiny in a therapy session.

Numerous studies have linked a sense of personal control over relevant outcomes, sometimes called an "internalized locus of control," with greater personal motivation.<sup>19</sup> The connection is thought to be fairly straight-forward: Unless I perceive myself as an agent with control over matters of importance, it does not make sense for me to invest much effort in my actions. As a general matter, children tend to have a more externalized locus of control than do adults.<sup>20</sup> That is, they are less likely to perceive themselves as in control of important outcomes, and more likely to ascribe control to powerful others or supernatural forces.

As children mature, they gradually become more "internalized," unless life experience undermines that process of development.<sup>21</sup> Children who have suffered from deprivation and stress early in life tend to be less internalized.<sup>22</sup> Life experience has, in fact, taught them that they have very little control over what matters most. Studies suggest that delinquent children show more of an externalized orientation than their non-delinquent peers, and their very experience with delinquent behavior and the State's response to that behavior may reinforce that orientation.<sup>23</sup> While this

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<sup>19</sup> See, e.g., Virginia C. Crandall & Beth W. Crandall, Maternal and Childhood Behaviors as Antecedents of Internal-External Control Perceptions in Young Adulthood, *in* Research with the Locus of Control Construct: Volume 2, Developments and Social Problems 53-54 (Herbert M. Lefcourt ed., 1983).

<sup>20</sup> See Stephen Nowicki & Bonnie R. Strickland, A Locus of Control Scale for Children, 40 *J. Consulting & Clinical Psychol.* 148, 149 (1973) (noting a trend toward greater internalization with age).

<sup>21</sup> See *id.*

<sup>22</sup> See Herbert M. Lefcourt, *Locus of Control: Current Trends in Theory and Research* 30, 31 (2nd ed. 1982) (reporting a correlation between greater externalization and a lack of access to opportunities and explaining that "groups who do not enjoy as much access to opportunity . . . are often found to hold fatalistic, external control beliefs").

<sup>23</sup> See, e.g., Carol A. Parrott & Kenneth T. Strongman, Locus of Control and Delinquency, 19 *Adolescence* 459, 468-69 (1984) (noting that the more external orientation of delinquent adolescents inspires deviant behavior, which, in turn, exacerbates fatalistic

cycle may prevent some from ever developing a more internalized locus of control, it may simply slow this development for others. It may well take until middle adolescence for these children to develop the sense of personal agency required to motivate them to put enough effort into the program tasks assigned to them.

A certain maturity may also be required before many children will perceive the legitimacy of the juvenile justice system, generally, and the program compliance requirement, particularly. Younger children may not perceive themselves as part of a larger society, let alone to think of right and wrong in societal terms. As they age, children develop a better appreciation of what is required for a well functioning society, and, as they begin to think more abstractly, what is required of a just society.<sup>24</sup> This is not to suggest that all children will mature into a conviction that they are being justly treated in response to wrong-doing, but rather that maturation will increase the likelihood that they will at least understand the purpose behind society's reaction to their deeds.<sup>25</sup> Where juveniles lack this understanding, they are more likely to interpret program requirements as arbitrary exercises of state power. If children so interpret their program obligations, every scheduled hour of program service may offer an opportunity for the child to rebel, to demonstrate his resistance to this arbitrary authority by refusing to comply.

### *B. Forming Successful Relationships*

The best programs will be designed to address these developmentally based impairments that may stand in the way of successful compliance. The stronger the relationships the staff establish with their clients—whether staff consists of therapists, probation officers, or social workers—the better will be the staff's ability to assess the particular developmental obstacles facing those clients and the most effective means of overcoming those obstacles. The intensity of the programs on Dr. Lipsey's list of successes reflects

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feelings and defensive blame-shifting).

<sup>24</sup> See, e.g., Kohlberg, *supra* note 13, at 402.

<sup>25</sup> Note how moral development interacts with the development of one's sense of self: Children who do not perceive themselves as responsible for outcomes in their lives are less likely to understand, let alone accept, society's efforts to hold them accountable.

this approach, and program success may hinge, in large part, on the successful formation of the relationship between provider and child. But forming a successful relationship with a professional stranger in an unfamiliar context also demands a certain kind of maturity—here socio-cognitive maturity—from a child. Children's ability to understand, and therefore respond appropriately to, adults performing new roles develops over time.<sup>26</sup> Absent this understanding, a child may cast the new adult in whatever more familiar role strikes the child as the closest fit, and then act accordingly.<sup>27</sup> Alternatively, the child may simply meet the new role with confusion, resisting active engagement of any sort until she can figure it out. The point here is not that children cannot come to understand new roles through exposure to those roles, or that the best professionals cannot help their clients to understand those roles through their very professional interactions, but rather that immaturity will offer some impediment to children's ability to grasp and respond effectively to these professionals. The least mature adolescents may derive considerably less benefit from the program while they are working this out.

#### IV. IMPLICATIONS

If successful participation in the kind of intensive rehabilitation programs Dr. Lipsey's data suggest are most effective demands maturity of their clients, a juvenile justice system that limits access to those programs to the least mature seems ill conceived. Perhaps we should abandon a separate system altogether and re-embrace rehabilitation as a primary goal in our justice system's response to all criminal conduct, whether committed by teenagers or adults. To the extent life history and other infor-

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<sup>26</sup> See, e.g., Malcom W. Watson, *Development of Social Role Understanding*, 4 *Developmental Rev.* 192, 206-09 (1984) (discussing a systemic progression of role-understanding in children from the ages of one to thirteen).

<sup>27</sup> See, e.g., Aaron M. Brower & Paula S. Nurius, *Social Cognition and Individual Change* 15 (1993) (applying schema theory to the development of social cognition, and suggesting that, while the development of schemas assists an individual in making sense of his social world, problems arise when individuals try to plug an unfamiliar role into poorly matched schema); Hans G. Furth, *The World of Grown-Ups: Children's Conceptions of Society* 14 (1980) (hypothesizing that children make sense of social situations by comparing them with situations with which they are more familiar).

mation might predict for greater or lesser rehabilitative prospects, such information could be taken into account in individual sentencing determinations.

For substantive as well as political reasons, however, I am not prepared to embrace this approach. On the substance, Dr. Lipsey's data do not support an age-blind rehabilitative approach. The data show greater success in the late rather than the early teenage years, but they do not track the curve to the other end of the age spectrum. While maturity may be one demand the best programs make of their subjects, they surely make others as well. Our intuition that, at some age, people become more resistant to change through treatment has not been demonstrated in research, but it also has not been disproved.

As a matter of politics, the public is likely to be extremely resistant to paying for rehabilitative services for all offenders regardless of their age.<sup>28</sup> It is hard enough to convince the public to spend money on rehabilitative services for anyone.<sup>29</sup> Unless the group qualifying for such services is somehow limited, the public is likely to reject the approach altogether.

Another approach would be to continue to aim the bulk of the rehabilitative resources at young offenders, but to adjust the age frame. Expanding juvenile court jurisdiction to include young adults (perhaps up to age twenty-five) may more accurately capture the range of individuals who can benefit from rehabilitative programming, while imposing limits on the size of the rehabilitation budget. Such an expansion would better match the age-range associated with youth crime<sup>30</sup> and would capture, for the typical individual, the bulk of the maturation process.<sup>31</sup> Indeed, fixing the

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<sup>28</sup> See Michael Vitiello, *Reconsidering Rehabilitation*, 65 *Tul. L. Rev.* 1011, 1012-13 (1991) (describing the abandonment of the rehabilitative model in adult sentencing).

<sup>29</sup> See Feld, *supra* note 1, at 83-86 (describing the political and public pressure put on policy-makers to try increasing numbers of juveniles as adults, and to respond more punitively, even within the separate juvenile justice system).

<sup>30</sup> See Moffit, *supra* note 6, at 675 (noting that the number of youths involved in crime peaks at 17, drops by over 50% by the early 20s, and by 85% by the time these young adults reach 28).

<sup>31</sup> See Robert L. Arnstein, *Young Adulthood: Stages of Maturity*, in *Normality and the Life Cycle* 108, 113-15 (Daniel Offer & Melvin Sabshin eds., 1984) (concluding that individuals reach a "biophysiological 'peak'" in their twenties and that intellectual, sociocultural, and psychological maturation is tied more to the achievement of certain edu-

age of adulthood at eighteen makes little developmental sense. As we have seen, children achieve some significant developmental milestones in their mid-teenage years, and continue to change significantly into their twenties, but nothing of developmental significance has ever been tied to the age of eighteen.<sup>32</sup>

Expanding the age-range of juvenile court jurisdiction to twenty-five may capture a positive developmental trend in amenability identified by Dr. Lipsey's analysis. But how do we respond to the negative corollary—that children lacking maturity may be less amenable to treatment in the programs studied? Dr. Lipsey's analysis suggests not that younger children are less subject to rehabilitation generally, but only that they are less subject to rehabilitation in the context of the programs addressed in his study—a wide range of programs all operated in the public sphere by professional strangers.

To be successful, the rehabilitation of younger juveniles must take place in a context that minimizes the social, cognitive, and emotional maturity required of its subjects. Younger adolescents are likely to do better, my analysis suggests, if treatment is offered in a familiar context (in the home or perhaps at school or in the neighborhood) and if that treatment engages the individuals with whom the minor is most comfortable (parents, teachers, ministers, and coaches). In these contexts, and with the assistance of these familiar intermediaries, younger children will be in a much better position to respond successfully to efforts to rehabilitate than they will be if faced with the potentially daunting task of negotiating rehabilitative programming in the public setting.

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cational and social milestones such as college attendance, living independently from one's parents, and getting married than to internal, physiological changes).

<sup>32</sup> In the Committee on Child Psychiatry's *How Old is Old Enough?*, the authors chronicle shifts in the age of majority from the time of the Roman Empire to the present, and suggest that the dramatic leap in the age of majority from 15 to 21 was probably due to the introduction of armored battle on horseback, which required a much more developed human frame. See Group for the Advancement of Psychiatry, *How Old is Old Enough?: The Ages of Rights and Responsibilities* 7-8 (1989).

## CONCLUSION

I suggest that rehabilitative programs for juvenile delinquents demand maturity of their clients, not because I think this explanation fully accounts for Dr. Lipsey's data, but because, as a possible partial account, it seems well worth considering. If even some fraction of treatment failures among juveniles can be accounted for by the developmental limitations of the juveniles served, and some fraction of the successes can be attributed to advancing age, we should seriously reconsider the design of our juvenile justice system. We should redesign our treatment of the youngest offenders to accommodate their immaturity, and we should expand the reach of juvenile justice jurisdiction to include the young adults who might profit most from its rehabilitative approach.

