

COMMENTARY

# Inconsistencies in legal and scientific perspectives on adolescents' capacities<sup>†</sup>

COMMENTARY ON... IN THE TWILIGHT ZONE

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## SUMMARY

The US Supreme Court's complaint in 2005 about inconsistencies in research into adolescents' decision-making capacity did not take into account the different demands placed on adolescents by controlled situations and unstructured situations. Apparent inconsistencies in research into adolescents' capacity in treatment situations and in trial situations may simply be due to methodological differences between the two bodies of research. Apparent inconsistencies in the law regarding presumptions about adolescents' capacity are related to differences in societal objectives across decision-making contexts.

## DECLARATION OF INTEREST

None.

unless evidence shows that the adolescent does not have the requisite capacity (Melton 2007).) Thus adolescents are considered not capable of making even simple treatment decisions, yet capable of deciding to plead guilty to crimes that could result in long sentences – in extreme situations, imprisonment for the rest of their lives.

## Research into adolescents' decision-making

If the law's presumptions about adolescents' capacity in these two contexts seem strangely contradictory, consider the research pertaining to these questions, much of which was done in the 1980s. Some suggests that adolescents are similar to adults on average in their capacity to understand and weigh treatment decisions – the opposite of the law's presumptions. However, we now have a body of studies, for example by Grisso (2000, 2003), suggesting that many adolescents do not have the capacity of adults to make decisions about waiving rights during police interrogations or when pleading to criminal allegations – again, the opposite of the law's presumptions, but also seemingly contradicting the research on adolescents' decision-making regarding treatment.

Sarkar (2010, this issue) points out that our laws and courts, as well as our research, seem inconsistent when addressing questions of adolescents' decision-making rights and capacity in different legal contexts. Moreover, he notes, the law about adolescents' capacity often seems to be at odds with research.

## Adolescents' decision-making and the law

Laws in the USA (and most other countries) do not require that doctors obtain adolescents' informed consent for medical procedures affecting their welfare (*Parham v. JR* 1979). On the one hand, in effect, our legal systems presume that adolescents do not have the requisite understanding and reasoning abilities to make treatment decisions. On the other hand, our laws governing delinquency cases presume that youth – even those who have not yet reached their teens – are capable of deciding to plead guilty to serious crimes, unless shown otherwise on a case-by-case basis. (Almost all US states that have considered the question have held that an adolescent must be competent to stand trial in delinquency cases and is presumed competent

## Research v. the law

What are we to make of this, asks Sarkar? Research seems to contradict both of the law's already contradictory presumptions about adolescents' capacity. And in doing this, the results of different bodies of research also seem to contradict each other. How can our research find that adolescents are inferior to adults in one decision-making context, but equal to adults in another context?

## Questions from Roper

As Sarkar points out, this very question was raised in the US Supreme Court case of *Roper v. Simmons* (2005). In a science brief to the Court the American Psychological Association (2004) argued that US law should exempt adolescents from full penalties

<sup>†</sup>See pp. 5–11, this issue.

(death sentences) for murder. The argument was based substantially on neuroscience studies of the developing brain, as well as behavioural research, suggesting that adolescents were still developing their capacities to weigh consequences and control their decisions, having not yet reached maturity. The majority of the judges indicated their agreement with this view in a decision against the death penalty for crimes committed as an adolescent. However, one of them chastised the American Psychological Association for failing to explain how this body of research squared with psychology's other body of research – described in an earlier Supreme Court case – on adolescents' 'adequate' capacity to make treatment decisions (American Psychological Association 1987).

### The crux of *Roper v. Simmons*

Although the dissenting judge made an interesting point, it is important to recognise that *Roper* had nothing to do with adolescents' capacities to satisfy legal requirements to make treatment decisions or decisions as defendants in trials. *Roper* was about fairness of the death penalty for crimes committed as an adolescent, given the possibility that adolescents could be construed as less culpable because of their less mature decision-making capacities. The question of adolescents' capacities in this context had little to do with their intellectual abilities, which by mid-adolescence are not much different from those of adults. The characteristics that are still developing are to do with the ability to delay impulses, resist peer pressure and attend to possible risks in the course of making decisions in emotionally charged situations (Cauffman 2000).

### Reconciling 'contradictions' in research

Thus, Steinberg *et al* (2009) pointed out that it is not inconsistent to consider adolescents less capable of reasoned decisions than adults in crime-event situations, but potentially competent in treatment situations. For example, several studies, such as those by Lewis (1980) and Ambuel & Rappaport (1992), have found that when girls in their mid-teens were faced with decisions about abortion, they understood and processed such information as competently as most adults and their choices were not that different from those of adults in similar circumstances. However, those situations typically involve counsellors or doctors who provide youth-relevant information about the treatment options and assist in thinking the matter through, often allowing time for deliberation and careful thought. Under these circumstances, it is more likely that adolescents can employ their adequate intellectual capacity more efficiently than

in unstructured situations, in which their choices may be determined more by their immature capacity for delay of impulse or their tendency to be influenced by peers.

But what about their fitness to plead and participate in their trials? Like treatment-decision contexts, decisions about pleading often occur in controlled, structured situations, often advised by legal counsel, in which adolescents should be less affected by their immature tendencies to make impulsive decisions that focus too much on short-term gains. Why does research find adolescents' capacities to be less like those of adults in this context but more like those of adults in treatment-decision contexts?

### Examining methodology

The answer might be nothing to do with theories about adolescents' capacities, but to do with the methods of the two bodies of research. The research on adolescents' decision-making capacities regarding treatment (Weithorn 1982) tends to have involved adolescents who were of roughly average intelligence and in some cases were screened for mental or emotional disorders. By contrast, most of the research into adolescents' fitness to plead or to stand trial has involved adolescents in the juvenile justice system, where two out of three adolescents meet the criteria for mental disorders and where the mean IQ is about 85 (Grisso 2004). Given these sampling differences, it is not surprising that we should find different levels of decision-making ability in our studies of adolescents' treatment decisions and our studies of adolescents' fitness to plead.

### Reconciling 'contradictions' in the law

But what about the law's inconsistency? How can the law consider adolescents incapable of making treatment decisions, but capable of deciding to plead guilty to a crime that will result in years in prison?

The apparent inconsistency might have little to do with the law's perceptions of adolescents' actual abilities and more to do with its societal objectives. Regarding treatment decisions, US law currently places higher value on protecting adolescents from their potentially poor decisions and on their parents' right to decide for them, than on giving adolescents the autonomy to decide for themselves. Thus they are denied decisional power primarily to preserve parental responsibilities and rights, not simply because of the law's perceptions of adolescents' actual capacities. By contrast, when adolescents are charged with crimes, the law's primary focus in recent years has been on

obtaining convictions to protect the public (Grisso 1997). This currently is weighted more heavily than protecting adolescents from their incapacities to make pleading decisions.

## Conclusions

Law and policy in these areas are not shaped simply by answering the question: ‘What are adolescents’ decisional capacities, compared with adults’ capacities?’. Rather, they involve additional, value-laden questions, especially: ‘What protection does society want to provide and in relation to what social purpose?’. In this light, there can be different answers in different legal contexts. It is not illogical for the law to perceive adolescents as having sufficient capacity to make decisions in one context but as lacking it in another, even if they have the same degree of absolute ability in both contexts. That degree of ability might be ‘sufficient’ to meet society’s objectives in one context and ‘insufficient’ to meet its objectives in the other.

Laws should be informed by science, but the law is not compelled to conform to an empirically based world view. Instead, it should consider this alongside society’s moral persuasions about the collective and individual welfare of its citizens.

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